

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

HERALD PUBLISHING COMPANY OF BELL-
FLOWER,

Respondent,

and

HERALD PUBLISHING COMPANY OF BELL-
FLOWER,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board

FILED

JUL 12 1956

No. 15027

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

HERALD PUBLISHING COMPANY OF BELL-
FLOWER,

Respondent,

and

HERALD PUBLISHING COMPANY OF BELL-
FLOWER,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

PAGE

Amended Answer to Complaint and Amendment to Complaint	16
Amendment to Complaint	14
Answer to Complaint	15
Answer to Petition for Enforcement of an Order of the N.L.R.B. and Petition to Set Aside Said Order	489
Appearances	1
Certificate of the N.L.R.B.	484
Charge Against Employer	3
Charge Against Employer, First Amended	6
Complaint	10
Decision and Order	129
Exceptions to Intermediate Report	135
Exhibits, General Counsel's:	
No. 1-A—Charge Against Employer	3
1-C—First Amended Charge Against Employer	6
1-E—Complaint	10
1-H—Amendment to Complaint	14
1-J—Answer to Complaint	15
1-K—Amended Answer to Complaint and Amended Complaint	16

Exhibits, General Counsel's—(Continued):	
6—Herald Publishing Co. of Bellflower Employment Record	216
16—Record of Salaries Paid Employees Prior to July 18, 1954	412
17—Letter Dated February 5, 1954 . . .	446
Intermediate Report and Recommended Order	20
Petition for Enforcement of an Order of the N.L.R.B.	487
Petition of Respondent for Rehearing	139
Statement of Points on Which Petitioner Intends to Rely	491
Statement of Points on Which Respondent Intends to Rely	492
Transcript of Proceedings	142
Witnesses, General Counsel's:	
Brewer, Ralph J.	
—direct	358
Butler, Warren W.	
—direct	247
—cross	305
—redirect	311
Farley, Doris	
—direct	315
—cross	321
Fleener, Oney A.	
—direct	241
—cross	243

Witnesses, General Counsel's—(Continued) :

Galt, Maxine	
—direct	221
—cross	230
—recross	238
Hartwell, Sumner	
—direct	147
—cross	170
—redirect	171
Hickey, Gloria	
—direct	328
—cross	333
—redirect	430
—recross	342
London, Sol	
—direct	375
—redirect	398, 409
—recross	399, 408
Ross, Raymond J.	
—direct	344
—cross	352
Sheets, William L.	
—direct	244
Smith, C. N.	
—direct	173
—cross	210
—redirect	212

Witness, Respondent's:

Brewer, Ralph J.

—direct 473

—cross 474

Lugoff, Leonard

—direct 419

—cross 421

—recross 432

Murray, Louis M.

—direct 416

Smith, C. S.

—direct 433

—cross 441

APPEARANCES

MARCEL MALLET-PREVOST,
Assistant General Counsel, National Labor Re-
lations Board,
Washington, D. C.,
For Petitioner, National Labor Rela-
tions Board.

MESSRS. LELAND & PLATTNER, by
PETER M. WINKELMAN,
3450 Wilshire Bldg.,
Los Angeles, California,
For Respondent, Herald Publishing Co. of
Bellflower.

Form NLRB-501

United States of America
National Labor Relations Board

CHARGE AGAINST EMPLOYER

Case No.: 21-CA-2044.

Date Filed: 7/21/54.

Compliance Status Checked by: H.F.D.

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Employer Against Whom Charge Is Brought

Name of Employer:

Herald Publishing Company.

Address of Establishment:

218 East Magnolia Street, Compton, California.

Number of Workers Employed:

Approximately 160.

Nature of Employer's Business:

Newspaper Publishing.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge:

On or about July 17, 1954, the employer discharged Sol London, and has refused to reinstate said London because of London's membership and activities on behalf of American Newspaper Guild, C.I.O.

At various times since on or about April 1, 1954, the employer has interrogated employees as to their union membership and activities; has warned employees not to join the American Newspaper Guild, C.I.O., and has threatened employees with dismissal if they became or remained members of the American Newspaper Guild, C.I.O.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge:

American Newspaper Guild, C.I.O.

4. Address:

1010 South Broadway, Los Angeles, California.

Telephone No.: PProspect 0241.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit:

Congress of Industrial Organizations.

6. Street and number, city, zone, and State:

Please send copies of all documents and correspondence to Wirin, Rissman & Okrand, 257 South Spring Street, Los Angeles, California.

Telephone No.: Michigan 9708.

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Date: July 19, 1954.

By /s/ ROBERT R. RISSMAN,
Attorney.

Wilfully False Statements on This Charge Can Be Punished by Fine and Imprisonment (U. S. Code, Title 18, Section 80).

Admitted in evidence as General Counsels' Exhibit 1-A, December 6, 1954.

Form NLRB-501

United States of America
National Labor Relations Board

**FIRST AMENDED CHARGE
AGAINST EMPLOYER**

Case No.: 21-CA-2044.

Date Filed: 8-19-54.

Compliance Status Checked by:

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Employer Against Whom Charge Is Brought

Name of Employer:

Herald Publishing Company.

Address of Establishment:

218 East Magnolia Street, Compton, California.

Number of Workers Employed:

Approximately 160.

Type of Establishment:

Newspaper Publishing.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge:

On or about July 17, 1954, the Employer discharged Sol London and has refused to reinstate said London because of London's membership and activities on behalf of American Newspaper Guild, CIO.

On or about August 17, 1954, the Employer acting through its agents, representatives and supervisors discharged Ray Ross because of his activities on behalf of and membership in the American Newspaper Guild, CIO.

On or about August 18, 1954, the Employer acting through its agents, representatives and supervisors discharged Gloria Hickey and Doris Farley because of their activities on

behalf and membership in the American Newspaper Guild, CIO.

At various times since on or about April 1, 1954, the Employer has interrogated employees as to their union membership and activities; has warned employees not to join the American Newspaper Guild, CIO, and has threatened employees with dismissal if they became or remained members of the American Newspaper Guild, CIO.

The Employer has by its agents, representatives and supervisors engaged in surveillance of union meetings in violation of Section 8 (a) (1) of the Act at various times since April 1, 1954.

By the above and other acts the Employer has interfered with, restrained and coerced employees in their rights guaranteed in Section 7 of the Act, or in violation of Section 8 (a) (1) and Section 8 (a) (3) of the Act.

3. Full Name of Party Filing Charge:
American Newspaper Guild, CIO.
4. Address:
1010 South Broadway, Los Angeles, California.
Telephone No.: PR. 0241.
5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit:
Congress of Industrial Organizations.

6. Street and number, city, zone, and State:

Please send copies of all documents and correspondence to Wirin, Rissman & Okrand, 257 South Spring Street, Los Angeles, California.

Telephone No.: MI. 9708.

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Date: August 19, 1954.

By /s/ JOSEPH L. CAMPO,

JOSEPH L. CAMPO,

International Representative.

Wilfully False Statements on This Charge Can Be Punished by Fine and Imprisonment (U. S. Code, Title 18, Section 80).

Admitted in evidence as General Counsel's Exhibit 1-C, December 6, 1954.

United States of America, Before the National
Labor Relations Board, Twenty-first Region
Case No. 21-CA-2044

HERALD PUBLISHING COMPANY,

and

AMERICAN NEWSPAPER GUILD, CIO.

COMPLAINT

It having been charged by American Newspaper Guild, CIO, that Herald Publishing Company has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, Public Law 101, 80th Congress, First Session, hereinafter called the Act; and the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Acting Regional Director for the Twenty-first Region, designated by the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

1. Herald Publishing Company, a California corporation, herein called the Respondent, prints and publishes seven or more community newspapers in Los Angeles County, California. The Respondent's gross annual income from these newspapers is in excess of \$500,000.

2. The Respondent is, and at all times material herein, has been, engaged in commerce within the meaning of the Act.

3. American Newspaper Guild, CIO, herein called the Union, is a labor organization within the meaning of the Act.

4. The Respondent, by and through its officers, agents and employees, did discharge the following employees on the dates mentioned and failed to re-employ them for the reason that they and each of them engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection as defined in Section 7 of the Act: Sol London on July 17, 1954; Raymond J. Ross on August 17, 1954; and Gloria Hickey and Doris Farley on August 18, 1954.

5. The Respondent, by its officers, agents and employees, while engaged in its business described in paragraphs 1 and 2 above, beginning on or about July 1, 1954, and thereafter up to and including the date of the issuance of this Complaint, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, by various acts and statements as follows:

(a) By threats by Jack Cleland, City Editor of the Compton-Lynwood editions of the Respondent's newspaper and a supervisory employee, early in July, 1954, that employees who join the Guild would not be working for the Herald American.

(b) By questioning employees as to union affiliation by Classified Advertising Manager Leonard Lugoff, a supervisory employee, during the early part of July, 1954, and by his threat that anyone who joins the Union would be immediately dismissed.

(c) By Lugoff's statement to employees during the early part of July, 1954, that the Respondent's Publisher, Colonel C. S. Smith, had instructed him to discharge the entire department if he could not determine who was responsible for the organizing drive.

(d) By questioning by Butler, on or about July 12, 1954, of employees as to whether they had joined the Union.

(e) By the statement by Managing Editor Butler, a supervisory employee, on or about July 17, 1954, that London had been discharged for attempting to organize for the Guild, and by a statement to the same effect by Cleland on or about August 14, 1954.

(f) By attempted surveillance by Louis Murray, a supervisory employee, of what he believed to be a union meeting, on or about July 17, 1954.

(g) By the granting of wage increases to several employees as a means of combating unionization on or about July 17, 1954, and thereafter.

6. The activities of the Respondent set forth in paragraphs 4 and 5 above, occurring in connection with the operations of the Respondent described in

paragraphs 1 and 2 above, have a close, intimate and substantial relationship to trade, traffic and commerce among the several states of the United States and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce as defined in Section 2, subsection (7) of the Act.

7. The foregoing acts of the Respondent, as set forth in paragraph 4 above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a), subsection (3), of the Act, and Section 2, subsections (6) and (7) of the Act.

8. The aforesaid acts of the Respondent, as set forth in paragraphs 4 and 5 above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a), subsection (1), and Section 2, subsections (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Acting Regional Director for the Twenty-first Region, on this 14th day of October, 1954, issues this Complaint against Herald Publishing Company, Respondent herein.

[Seal] /s/ GEO. A. YAGER,
Acting Regional Director, National Labor Relations
Board, Twenty-first Region.

Admitted in evidence as General Counsel's Exhibit 1-E, December 6, 1954.

Before the National Labor Relations Board

[Title of Cause.]

AMENDMENT TO COMPLAINT

Comes now the General Counsel, by the Acting Regional Director for the Twenty-first Region, and amends the Complaint heretofore issued in this proceeding as follows:

In the paragraph numbered "1" the following sentence should be added immediately after the matter appearing therein:

"The Respondent also subscribes to and uses the services of United Press, which is an interstate news service; and publishes various nationally syndicated newspaper features including, without limitation, features copyrighted by The Bell Syndicate, Ltd., Field Enterprises, Inc., and McNaught Syndicate, Inc.; and advertises nationally sold products."

Dated at Los Angeles, California, this 10th day of November, 1954.

[Seal] /s/ GEO. A. YEAGER,

Acting Regional Director, National Labor Relations Board, Twenty-first Region.

Admitted in evidence as General Counsel's Exhibit 1-H, December 6, 1955.

[Letterhead]

Herald American
General Offices

218 E. Magnolia St.—Compton, California

November 19, 1954.

National Labor Relations Board,
Room 704,
111 W. 7th St.,
Los Angeles, Calif.

United States of America, Before the
National Labor Relations Board, 21st Region
Case #21-CA-2004

Herald-American and Newspaper Guild, CIO.

ANSWER TO COMPLAINT

After reading this complaint and the amendment to the complaint served upon this company, the complaint itself is so full of misleading statements, incorrect statements innuendo and deliberate untruths that this company finds it necessary to merely answer that any charges of violation of the National Labor Relations Act imputed to this company are totally incorrect, false and untrue to the best of our knowledge and belief.

/s/ C. S. SMITH,

Publisher, Herald
Publishing Company.

Subscribed and sworn to before me this 19th day of November, 1954.

[Seal] /s/ GEORGIA D. VERNON,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires June 5, 1955.

[Stamped]: Received Nov. 22, 1954; N.L.R.B.

Admitted in evidence as General Counsel's Exhibit 1-J, December 6, 1954.

Before the National Labor Relations Board
HERALD PUBLISHING COMPANY,
and
AMERICAN NEWSPAPER GUILD, CIO.

AMENDED ANSWER TO COMPLAINT AND
AMENDMENT TO COMPLAINT

Comes now Herald Publishing Company and in answer to the complaint and amended complaint on file herein, admits, denies and alleges as follows:

I.

Answering paragraph "1" of said complaint, this defendant denies that the Herald Publishing Company, a California corporation, herein called the Respondent, prints and publishes seven or more community newspapers in Los Angeles County,

California, but in that connection states that the Herald Publishing Company of Bellflower, a California corporation, prints and publishes seven or more community newspapers in Los Angeles County, California.

Further answering said paragraph, this defendant admits that the gross annual income from the newspapers published is in excess of \$500,000.00, but denies generally and specifically each of the allegations contained in said paragraph, particularly the amendment to this paragraph, and in connection therewith and by way of explanation of its general denial, states as follows:

(a) That said Herald Publishing Company of Bellflower pays the United Press \$5.00 per week for a retainer service and weekly letter on local affairs, but does not subscribe to or use the services within the contemplation of the meaning of the Act.

(b) Herald Publishing Company of Bellflower does not publish various nationally syndicated newspaper features within the meaning of the Act but only uses the two-column panel cartoon with no continuity or regularity for filler material only.

(c) The advertising of national products is less than one-half of one per cent of the total advertising sales (except for local merchants advertising products sold locally).

II.

Answering paragraph "2" of said complaint, this

defendant denies generally and specifically each and every allegation therein contained, and the whole thereof.

III.

Answering paragraph "4" of said complaint, this defendant denies each and every allegation therein contained, and in connection with the allegations set forth in said paragraph, states that Sol London was discharged for unsatisfactory services, and that Gloria Hickey, Doris Farley and Raymond J. Ross were discharged solely for economy reasons.

IV.

Answering paragraph "5" of said complaint, this defendant denies each and every allegation therein contained, and particularly answering subdivision "(a)" thereof denies that Jack Cleland made some or any similar statements set forth in said subdivision; as to subdivision "(b)" thereof denies each and every allegation therein contained; as to subdivision "(c)" thereof denies each and every allegation therein contained; as to subdivision "(d)" thereof denies each and every allegation therein contained; as to subdivision "(e)" thereof denies each and every allegation therein contained; as to subdivision "(f)" thereof denies each and every allegation therein contained; as to subdivision "(g)" thereof denies each and every allegation therein contained.

V.

Answering paragraph "6" of said complaint, this defendant denies generally and specifically each and every allegation therein contained, and the whole thereof.

VI.

Answering paragraph "7" of said complaint, this defendant denies generally and specifically each and every allegation therein contained, and the whole thereof.

VII.

Answering paragraph "8" of said complaint, this defendant denies generally and specifically each and every allegation therein contained, and the whole thereof.

Wherefore, defendant, Herald Publishing Company, a California corporation, prays that the complaint herein and the amendment thereto be dismissed, and that this defendant have such other and further relief as is just and proper in the premises.

KAUFMAN & LELAND,
By /s/ SIDNEY W. KAUFMAN,

Attorneys for Defendant,
Herald Publishing Co.

Duly verified.

Admitted in evidence as General Counsel's Exhibit 1-K, December 6, 1954.

United States of America, Before the National
Labor Relations Board, Division of
Trial Examiners
Branch Office—San Francisco, California

Case No. 21-CA-2044

HERALD PUBLISHING COMPANY OF
BELLFLOWER,

and

AMERICAN NEWSPAPER GUILD, CIO.

MR. BEN GRODSKY,

For the General Counsel.

MESSRS. KAUFMAN and LELAND, by
BY MR. ROBERT R. RISSMAN,

For the Union.

MESSRS. KAUFMAN and LELAND, by
SIDNEY W. KAUFMAN,

For the Respondent.

Before: Herman Marx, Trial Examiner.

INTERMEDIATE REPORT AND
RECOMMENDED ORDER

Statement of the Case

On July 21, 1954, American Newspaper Guild, CIO (also described herein as the Guild), filed a charge with the National Labor Relations Board (also referred to below as the Board) against the

Respondent, Herald Publishing Company of Bellflower.¹ The Guild filed an amendment to the charge on August 19, 1954. Based upon the charge, as amended, the General Counsel of the Board issued a complaint on October 14, 1954, alleging that the Respondent had engaged, and was engaging, in unfair labor practices within the meaning of the National Labor Relations Act as amended (61 Stat. 136-163), also referred to herein as the Act. Copies of the charge, the amendment thereof, and the complaint have been duly served upon the Respondent.

With respect to the claimed unfair labor practices, the complaint, as amended at the hearing in this proceeding, alleges in substance that on various occasions during a period beginning on or about July 1, 1954, the Respondent, in violation of Section 8(a) (1) of the Act, engaged in conduct constituting interference with, and restraint and coercion of, its employees in the exercise of rights guaranteed to them by Section 7 of the Act; and that the Respondent, in violation of Section 8(a) (1) and

¹The name of the Respondent is stated in the charge and in the complaint, as originally issued, as Herald Publishing Company. The Respondent's correct name is Herald Publishing Company of Bellflower. Upon the General Counsel's motion at the hearing in this proceeding, the complaint was amended to reflect the Respondent's correct name. Pointing to Section 102.12 of the Board's Rules and Regulations, which requires that a charge set forth the "full name" of the party charged, the Respondent took the position at the hearing, in effect, that the misnomer is a bar to this proceeding. The view misconceives the function of a charge. It

8(a) (3) of the Act, discriminatorily discharged four employees, Sol London (on July 17, 1954), Raymond J. Ross (on August 17, 1954), and Gloria Hickey and Doris Farley (both on August 18, 1954) because the said employees had exercised rights guaranteed them by the Act.

The Respondent filed an answer which, as amended at the hearing, in effect denies the commission of the alleged unfair labor practices attributed to it, and asserts in substance that London "was discharged for unsatisfactory services," and that Ross, Hickey and Farley were terminated "solely for economy reasons."

Pursuant to notice duly served upon all parties, a hearing was held before me, as duly designated Trial Examiner, at Los Angeles, California, on December 6, 7, 8, 9, and 10, 1954. All parties were represented by counsel, participated in the hearing, and were given a full opportunity to be heard, examine and cross-examine witnesses, adduce evidence, submit oral argument, and file briefs and proposed findings of fact and conclusions of law. Of the various motions made at the hearing, reference need be

is not a pleading and "simply sets in motion the investigative machinery of the Board." *N.L.R.B. v. Waterfront Employers*, 211 F. 2d 946 (C.A. 9). For that purpose, precision in the charge is not essential. *N.L.R.B. v. Kingston Cake Co.*, 191 F. 2d 563, 567, (C.A. 3). Moreover, the Respondent filed an answer addressed to the merits of the complaint, and it is thus evident that it has been in no way prejudiced or misled by the misnomer. The Respondent's position lacks merit. See *De Luxe Motor Stages*, 93 N.L.R.B. 1425, enforced 196 F. 2d 499 (C.A. 6).

made here only to one, as the record adequately reflects the disposition of the others. Decision was reserved on a motion by the Respondent, after the close of the evidence, to dismiss the complaint on the ground that the Board has no jurisdiction over this proceeding, and that it would not effectuate the policies of the Act to assert such jurisdiction. The motion is hereby denied for reasons set out below. The General Counsel and the Respondent submitted oral argument after the close of the evidence. No briefs have been filed.

Upon the entire record, and from my observation of the witnesses, I make the following:

Findings of Fact

I. Nature of the Respondent's Business; Jurisdiction

The Respondent is a California corporation; maintains its principal place of business in Compton, Los Angeles County, California; and is engaged in the business of printing, publishing, distributing and selling a newspaper known as the Herald American. The newspaper, a semi-weekly publication, is published each Thursday and Sunday. A weekly supplement to the paper, known as "Garden and Home Magazine," is also published each Sunday. The Thursday issue appears in nine editions. Seven editions are issued on Sunday. Each edition is associated or identified with one or more

communities in Los Angeles County. For example, there are separate editions for the communities of North Long Beach, Compton and Bellflower, among others. The newspaper is printed in Compton where the Respondent operates two printing establishments for that purpose, but it also maintains separate offices in various of the other communities where it stations such personnel as advertising and editorial employees. The combined circulation of the Thursday editions is approximately 142,000; the circulation of the Sunday issue is slightly smaller. The Respondent sends no copies of its newspaper to any points outside the State of California. Circulation of the paper is apparently confined to the Los Angeles County communities for which the respective editions are named.

The record is lacking in specificity concerning the amount of the Respondent's annual gross income, and what portions of the revenue are derived from advertising and circulation, respectively. One may, however, spell out enough from the evidence to determine whether the Board has jurisdiction and whether its assertion will effectuate the policies of the Act. The Respondent's annual gross income from the publication of the newspaper exceeds \$500,000 (how much in excess does not appear). Although the record contains no figures for the amount of revenue derived from advertising, it is

fairly inferable from the evidence as a whole that the volume of advertising is considerable, and that the newspaper's revenue from advertisements accounts for a substantial portion of its gross income.²

The newspaper advertises a variety of products, including what one witness termed "practically every make of popular cars." Automobile advertisements appear in the Herald American every week, but the heaviest concentration of such advertising occurs each year when the automobile manufacturers bring out their new models. Some of the advertisements are placed by advertising agencies, and others by local automobile dealers. The offices of the agencies which place the automobile adver-

²The record reflects only two sources of income, advertising and circulation. Circulation revenue may be roughly approximated. The newspaper sells for 10 cents a copy. About "30% to 40%" of the copies distributed are paid for. Payment at 10 cents per copy for 30% of 142,000 copies issued 104 times in a year would yield annual gross receipts of \$443,040 for the given year. As the evidence does not establish by how much the annual gross income exceeds \$500,000, it is impossible to determine from the record what proportion of the revenue is derived from advertising. One may safely conclude, however, from the figures given that the advertising income is substantial. Other features of the record which support that conclusion will appear later.

tisements are all located in California.³ Copy for automobile advertising such as mats used to reproduce pictures of automobiles, are supplied to the newspaper by dealers and advertising agencies, as the case may be. The record does not establish whether any of the copy originates outside the State of California. When an agency places the advertisement, the newspaper usually secures approval of the copy from a local dealer because the latter pays for the advertisement (and, perhaps, although the record is not clear on the point, because the dealer's name appears in the advertising). The evidence, however, does not establish that the dealers are actually the agencies' principals, nor can it be determined in the state of the record whether the authority for the agencies' activities comes either from automobile manufacturers or distributors.⁴

³It is not unlikely, and the record suggests, that at least one or more of the agencies have offices in other states, but the evidence on the subject has insufficient substance to warrant a finding in the premises.

⁴There is testimony in the record that advertisements placed by the dealers are financed from funds "allotted" to them. The sources of the allotments, whether from manufacturers or distributors, are not identified in the record. The testimony in question is lacking in specificity and concrete detail, and may be of hearsay origin. I base no finding on it.

The Herald American is not a member of any interstate news agency, but it subscribes to, and receives in the mail each week, a news letter issued by the United Press which, it is common knowledge, is engaged in the distribution of news to newspapers throughout the United States. The weekly letters contain "news from various parts of the country." C. S. Smith, president of the Respondent and publisher of the Herald American, denied that the newspaper has actually used the news letters, and he explained the subscription with testimony that the paper had at one time used the wire service of the news agency; that the service was discontinued in or about 1946; and that the Respondent subscribes to the news letters in order to retain some right (not otherwise elaborated in the record) to resume the wire service. Smith also asserted that the newspaper does not publish "anything but local news." However, the "Garden and Home Magazine" supplement to the issue of September 12, 1954, contains a substantial number of items dealing with events that occurred, or places that are located, outside the State of California. The initials U.P. are appended to the bottom of a substantial number of such items on pages 15 and 19 of the supplement (G. C. Exh. 3). The issue for October 21, 1954, contains an article entitled "College Coeds Discuss Campus Fashion." The item is datelined Berkeley, California, and Austin, Texas, with the legend at the bottom: "Written for U.P. by Joyce Williams, University of California, and Patricia Strum, University of Texas."

Smith was interrogated about the source of some of the articles in question, and notwithstanding his prior assertion that the paper publishes only "local news," he speculated that one article dealing with tourist information, attributed to U.P. and dated Ottawa, "could be out of canned information which is sent to us by some travel bureau." He endeavored to account for the initials with the statement that "that (the item and the initials) could be out of any daily newspaper." With respect to another item attributed to U.P., and captioned "Make Low Bid Pocket Papers on Ohio Town," he testified that the source of the story would be a "rank guess" on his part. When asked whether it would be "consistent" for a newspaper to credit "something to U.P. if it comes from another source," Smith gave the somewhat unresponsive reply: "This is a magazine (the supplement) which is headed by a girl who has practically carte blanche on it. She doesn't have service (sic) to these various (news) letters and wherever she picks the stuff, we have let her go on it because she gets it locally or everything is sent to her by some local agent. There is no policy on it except interesting reading."

Smith's testimony as to where the U.P. stories "could" have originated is obviously speculative, and I am unable to accord any probative weight either to such speculation or the assertion that an employee with "carte blanche" authority secured the stories "locally" or from "some local agent" (not otherwise identified). Similarly, I am unable to give any operative weight to his claim in effect

that the "girl who has practically carte blanche" in the preparation of the magazine has not used the United Press news letters. Sol London, one of the dischargees involved in this proceeding, testified that he was stationed at the newspaper's Compton headquarters prior to July, 1953; that while employed there he used to open the mail; that "material from United Press" came to his desk in the mail; that he asked either Jack Cleland, city editor, or W. W. Butler, managing editor, what disposition should be made of the material, and was instructed by one or the other to turn it over to "Home and Garden."⁵ While London stated that he could not recall whether it was Cleland or Butler who gave him that instruction, it may be noted that the record contains no denial by either Cleland (who did not testify) or Butler (who did) that the instruction described by London was given to him. Moreover, various facets of Smith's testimony substantially detract from the force of his claim that the person in charge of "Home and Garden Magazine" has not used the news letters. In the first

⁵Unlike Butler, Cleland, as will appear, is not a supervisor within the meaning of the Act. However, when London was hired, Butler told him that he "would be working under" Cleland, and, while London was stationed in Compton, Cleland exercised some authority over him from time to time. At the least, Cleland was vested with apparent authority over London in the Compton office. Therefore, London's description of an instruction from Cleland regarding the disposition of the United Press material is competent evidence.

place, as already noted, Smith was unable to give the actual source of any of the stories credited to U.P. Second, he operates other enterprises, and he testified at more than one point that prior to September 1, 1954, his participation in the active management of the newspaper was "on a very small part-time basis." According to his testimony, he is now active as general manager, but he has no "regular office" at the headquarters of the newspaper in Compton and transacts most of his business at his home. Thus, it may be asked, how may one conclude from Smith's testimony that the person in charge of the magazine had no access to the news letters and did not use them? A negative answer is required not only by the features of his evidence pointed out above but by other aspects of his testimony. When questioned about recent news stories (appearing after he assumed the title of general manager) pertaining to new automobile models, he replied that he did not have "the slightest idea" as to the source of the articles or as to the identity of the individual in his organization who "would know where these news items come from." He explained his lack of personal knowledge with the statement, "I have one hundred and eighty people in the organization." In sum, it seems to me that this explanation by Smith applies with equal force to his claim that the individual in charge of the "Home and Garden" supplement has not used the United Press news letters in preparing the news items attributed to U.P., initials which obviously are abbreviations for United Press.

The fact that the news letters are not in evidence does not preclude an inference that the U.P. stories came from the news letters. The basic facts are that the Respondent subscribes to United Press weekly news letters which contain "news from various parts of the country"; publishes news stories concerning events occurring, and places located, outside California; and attributes items of that nature to U.P. or, in other words, to United Press, as the source. Moreover, London's testimony described above, is uncontroverted and contributes weight to the conclusion that the news letters have been used as the source of stories in the supplement. In short, there is evidence which reasonably warrants an inference that the stories credited to United Press came from the news letters. To escape such an inference, it seems to me that some duty devolved upon the Respondent to go forward with probative evidence negating it, particularly as information shedding light on the matter is within its special knowledge. The Respondent produced no such evidence, nor has it explained its failure to do so. Certainly, Smith's speculations as to the possible sources of the U.P. stories, his inaccurate assertion that the Herald American prints only "local news," and his generalization that the person in charge of the supplement "doesn't have service to these letters," do not probatively negate the inference. The weight of the evidence supporting the inference is enhanced by the failure of the Respondent to present any probative evidence, peculiarly within its

knowledge, as to the source of the U.P. items. See *N.L.R.B. v. Ohio Calcium Company*, 133 F. 2d 721 (C.A. 6). Accordingly, I find that such news items were furnished to the Respondent by United Press and were based upon, or taken from, one or another of that organization's weekly news letters.⁶

In August, 1954, the Respondent purchased publication rights to three cartoon features, each of which is issued by a different syndicate. Two of the syndicates are located in New York, and the third in Chicago. The publication rights were purchased from "a Glendale, California, broker" who in turn ordered the features for the *Herald American* from the syndicates. Publication of cartoons received from one or the other of the syndicates was begun by the Respondent on August 25, 1954, and discontinued on December 8, 1954, while the hearing in this proceeding was in progress. The *Herald American* customarily used one or another of the features as "filler" material in one or two of the community editions of each issue.⁷

⁶The Respondent also subscribes to and receives from United Press another weekly news letter which deals with events in Sacramento, California's state capital. Smith denied that the newspaper uses this letter, and there is no evidence to the contrary. Jurisdictional findings made below are not based on the Sacramento news letters.

⁷The issues for October 14 and December 2, 1954, are typical of the use of the cartoons. On the first date, of the nine editions, only the Downey-Riviera and Paramount-Hollydale editions contained car-

The Respondent contends in effect that its operations do not affect interstate commerce, and that the Board is thus without jurisdiction over this proceeding. An alternative contention is that the assertion of jurisdiction, if the Board has it, would not effectuate the policies of the Act. The Board has recently adopted criteria (to be described later) by which it intends to be governed in its assertion of jurisdiction over newspapers. It may be noted that the alleged unfair labor practices attributed to the Respondent antedated this expression of Board policy. For that reason, as well as the fact that the relevant criteria are of recent origin, I think it appropriate to refer not only to the applicable current policies but to some aspects of criteria in effect prior thereto.

In 1950, in a series of decisions, the Board announced certain criteria by which it would be governed in its assertion of jurisdiction. The criteria, some but not all prescribing dollar volume standards, were respectively applicable to different situations or types of enterprises and need not be described in detail.⁸ It need only be noted that in one

toons, the latter publishing two. The December 2 issue published two cartoons, both appearing only in the Norwalk community edition. The fact that the cartoons were used as "filler" is immaterial. The point to bear in mind is that they were used frequently during the period of the subscription.

⁸For the criteria see: WBSR, Inc., 91 NLRB 630; W. C. King, d/b/a Local Transit Lines, 91 NLRB 623; The Borden Company, Southern Divi-

of the policy decisions the Board announced that it would continue to take jurisdiction "over instrumentalities and channels of interstate * * * commerce" (WBSR, Inc., 91 NLRB 630, involving a radio station); and that shortly thereafter this standard was applied to a newspaper because of "its membership in interstate news services" (Press, Incorporated, 91 NLRB 1360). As evidenced by the Press decision, the assertion of jurisdiction over newspapers after the announcement of the 1950 policy standards (and, as will appear, prior to 1954) was based not upon standards particularly applicable to newspapers, as such, but upon findings that criteria announced in one or another of the 1950 decisions were applicable.⁹

sion, 91 NLRB 628; Stanislaus Implement and Hardware Company, Limited, 91 NLRB 618; Hollow Tree Lumber Company, 91 NLRB 635; Federal Dairy Co., Inc., 91 NLRB 638; Dorn's House of Miracles, Inc., 91 NLRB 632; The Rutledge Paper Products, Inc., 91 NLRB 625; Westport Moving & Storage Co., 91 NLRB 902.

⁹In the recent case of The Daily Press, Incorporated, 110 NLRB No. 95, the Board appears to have assumed that in 1950 it adopted criteria specially applicable to newspapers, as such. That case, citing Press, Incorporated, *supra*, and apparently relying on it, contains the following statement: "Among the standards adopted in 1950 was the so-called 'newspaper' standard. Pursuant to this standard, the Board asserted jurisdiction over all newspaper companies which hold membership in or subscribe to interstate news services, or publish nationally syndicated features, or advertise nationally sold products * * *" (emphasis supplied).

In *Wave Publications, Inc.*, 106 NLRB 1064, the Board had occasion to pass on the applicability of the 1950 standards to a California newspaper of a type somewhat similar to the *Herald American*. Like the latter, the publication in the *Wave* case had an annual gross income in excess of \$500,000, much of it derived from advertising revenue; held no membership in "any interstate wire service"; subscribed to "syndicated cartoons" which were sent to it from points outside California; and, among various types of advertising, carried advertisements of "national products" placed both by advertising agencies and "local merchants." Unlike the evidence in this proceeding, the record in the *Wave* case establishes concretely that adver-

It may be respectfully pointed out the 1950 Press decision did not establish policy standards in quite those terms. Although the Board made commerce findings in the *Press* case based, in part, on the newspaper's advertising and its publication of syndicated features, a careful reading of the decision requires the conclusion that the governing factor for the assertion of jurisdiction was not a policy standard particularly applicable to newspapers, as such. For its basic holding in the *Press* case that the assertion of jurisdiction would effectuate the policies of the Act, the Board, citing and applying a case involving a radio station (*WBSR, Inc.*, 91 NLRB 630), invoked its previously announced policy of taking jurisdiction over instrumentalities or channels of interstate commerce, pointing out that the newspaper involved was such an instrumentality or channel because of "its membership in interstate news services." Moreover, that advertising of "nationally sold products" was not

tisements of "national products" were placed by "national advertising agencies located outside California"; and that "local merchants" who placed advertisements of "national products" were "reimbursed, in part, for the expense involved in advertising the national product(s), by the national manufacturer." Also, unlike this proceeding, the record in the Wave case contained concrete evidence of the value of goods or services purchased by the employer outside California. The Board found that for a given annual period, the publication "purchased materials and supplies valued at \$225,000, of which approximately 70 per cent was shipped directly to the Company from outside California"; and that "in addition, the Company paid out about \$3,000 annually for syndicated cartoons, columns, and advertising mat services distributed

of itself a criterion (before 1954) for the assertion of jurisdiction is made manifest by Wave Publications, Inc., 106 NLRB 1064, decided August 28, 1953). There the Board declined to assert jurisdiction, although finding that the newspaper advertised "national products" and received "syndicated cartoons" from outside the state. In taking that position, the Board pointed out in some detail that the newspaper met none of the dollar volume or other criteria announced in 1950, thus implying that at the time of the Wave decision there was no separate "'newspaper' standard" and that the assertion of jurisdiction over newspapers turned on whether they met any of the standards announced in the 1950 policy decisions. To the same general effect, see, also, Mutual Newspaper Publishing Co., 107 NLRB No. 127, and J. Weiss Printers, 92 NLRB 993.

from outside California.” The Board held that, although it had jurisdiction, it would not assert it because the facts did not establish “that the Company’s operations meet any of the announced requirements for the assertion of jurisdiction.”¹⁰

The Respondent relies upon the Wave decision for support of its position. Although the commerce facts relating to advertising and syndicated features afforded a stranger basis for the assertion of jurisdiction in the Wave case than do comparable facts in this proceeding, it may be noted that the newspaper involved in the Wave decision, unlike the Herald American, did not subscribe to an interstate news service. In any event, for reasons that will appear the Wave decision is not decisive of the jurisdictional issues presented here.¹¹

In 1954, the Board, in a series of decisions, announced new criteria for the assertion of jurisdiction. In the main, these were revisions of the pre-existing policies. With one exception, detailed reference need not be made to the new policy deci-

¹⁰The Board’s holding in the Wave case should be distinguished from a prior decertification proceeding involving the same employer, reported at 90 NLRB 274. There the Board asserted jurisdiction, but in its second decision, the Board pointed out that its earlier decision antedated the adoption of the 1950 criteria.

¹¹For the same reasons, Mutual Newspaper Publishing Co., 107 NLRB No. 127, and J. Weiss Printers, 92 NLRB 993, both cited by the Respondent, are not controlling.

sions,¹² for only one of them is pertinent here. The case in question is The Daily Press, Incorporated, 110 NLRB No. 95. There the Board announced * * * “that in future cases the Board will assert jurisdiction over newspaper companies which hold membership in or subscribe to interstate news services, or publish nationally syndicated features, or advertise nationally sold products, if the gross value of the business of the particular enterprise involved amounts to \$500,000 or more per annum” (emphasis supplied). Several features of the quoted language may be noted. First, apart from the monetary standard, the other criteria are stated in the disjunctive. Thus, for example, a newspaper with a gross annual income of at least \$500,000 meets the standards if it advertises “nationally sold products” whether or not it also holds membership in or subscribes to interstate news services, or publishes “nationally syndicated features.” Second, the assertion of jurisdiction is not conditioned upon any dollar volume of advertising income or of payments for nationally syndicated features, nor upon the

¹²For announcements of new criteria see: Breeding Transfer Company, 110 NLRB No. 64; Greenwich Gas Company and Fuels, Inc., 110 NLRB No. 91; Hogue and Knott Supermarkets, 110 NLRB No. 68; McKinney Avenue Realty Company, 110 NLRB No. 69; The Daily Press, Incorporated, 110 NLRB No. 95; Maytag Aircraft Corporation, 110 NLRB No. 70; Insulation Contractors of Southern California, Inc., 110 NLRB No. 105; Wilson-Oldsmobile, 110 NLRB No. 74; Jonesboro Grain Drying Cooperative, 110 NLRB No. 67.

regularity or frequency with which such features are used. Third, the application of the advertising criterion does not hinge upon the location of the advertiser or the source of the advertising. In other words, the criterion is applicable irrespective of whether the advertiser is the producer of the "nationally sold products," an advertising agency, or a "local merchant," or whether the person or firm placing the advertisement is located in the same state as the newspaper. The advertising standard requires only that the commodities advertised be "nationally sold products." Finally, it is evident that although *The Daily Press* decision did not expressly overrule the *Wave* case, the policy announcement in the former supersedes the holding of the *Wave* decision and must be held, by implication, to overrule the holding relating to advertising of what the Board in the *Wave* case termed "national products" (a phrase which apparently means the same as the term "nationally sold products" used in *The Daily Press* decision). It seems clear that had the standards announced in *The Daily Press* case been in effect at the time of the *Wave* decision, the Board would have concluded in the latter case that the assertion of jurisdiction would effectuate the policies of the Act, if for no other reason than that the newspaper met the monetary and advertising criteria of *The Daily Press* case.

Applying the criteria of *The Daily Press* case to the evidence in this proceeding, it may be noted initially that the Respondent's annual gross income

meets the monetary standard. The only question is whether any one of the other criteria is met. On that score, the subscription to the United Press weekly news letters "containing news from various parts of the country" is of itself a sufficient basis for the assertion of jurisdiction.¹³ But that is not the only ground established by the evidence. The Herald American advertises many types of commodities, but, with one exception, it is unnecessary to consider which of these are "nationally sold products."¹⁴ Whether any other types of products

¹³The evidence does not establish from what location the news letters are mailed, but that is immaterial.

¹⁴As this may be one of the earlier cases involving the new newspaper criteria to come before the Board, I take the liberty to set out some questions which the advertising standard suggests, so that the Board may address itself to the questions, if it deems some clarification of the standard to be appropriate. To be considered as "nationally sold products" must the goods be sold throughout the nation, or is it enough that they are sold in a substantial number of states? To what extent may one infer that goods are sold "nationally" from the fact that they are so-called standard brands. If such an inference may be drawn, what products may be regarded as standard brands? What products are so well known to the American public that one may take judicial notice that they are "nationally sold," and how extensive must such knowledge be before the doctrine of judicial notice becomes applicable? These are not idle questions, for at least some of them are suggested by evidence the General Counsel presented in this proceeding. He appears to assume, and to seek a finding, that various commodities such

mentioned in the record qualify for the term, the controlling facts are that the advertisements include those of "practically every make of popular cars," and that such automobiles are, without a doubt, "nationally sold products."¹⁵ As already noted, evidence that the advertising of such products comes from, or is financed by, sources without the state is not a precondition of the application of the standard. Thus the question of jurisdiction is unaffected by the fact that the automobile advertisements are placed by local dealers or advertising agencies located within the state (although it may be noted that Ralph J. Brewer, formerly general manager and now vice-president of the Respondent,

as Cinch cake-mix, Burgermeister beer, Luzianne coffee, Norway sardines, Hills Brothers coffee, Playtex brassieres, and Lucky Lager beer, all advertised in the Herald American, are "nationally sold products" even though no evidence was adduced that they are sold "nationally." Perhaps one may take judicial notice that one or more of these products are sold "nationally." I find it unnecessary to do so, nor to make any findings concerning any of the enumerated products, in view of the conclusion reached herein with respect to the automobile advertising.

¹⁵It is common knowledge that what are termed in the testimony as "popular cars" (for example, Chevrolets, Fords, and Packards) are sold throughout the United States. Thus, I take judicial notice that these are "nationally sold products." Cf. *N. L. R. B. v. Townsend*, 185 F. 2d 378 (C. A. 9), cert. den., April 16, 1951, U. S.; *N. L. R. B. v. Howell Chevrolet Co.*, 204 F. 2d 79 (C. A. 9); affirmed 346 U. S. 482.

testified that agencies "perhaps" act "for the manufacturer," and in other instances, "for the local dealers association"). The evidence does not establish the amount of income derived by the Respondent from automobile advertising, nor the volume of the advertisements, but the absence of such evidence does not affect the assertion of jurisdiction here, for the applicable criterion requires no such precision in proof. Brewer testified that the newspaper receives automobile advertising from one agency or another every week; that such advertising is heaviest each year at the time when the new automobile models are introduced; and that "we have been very heavy recently in that type of advertising." He also stated that new models were being introduced at the time of the hearing, and indicated that "a lot of money" was being spent for their advertisement. From such testimony, the conclusion is unavoidable that a substantial, even though unspecified, portion of the newspaper's advertising volume and revenue is derived from advertisements of "nationally sold products." Thus the Herald American meets the advertising standard announced in *The Daily Press* case.

Turning to the cartoon features, one may exclude them from consideration and, on the basis of facts meeting the other criteria, still emerge with the conclusion that the Respondent's operations affect interstate commerce and that the assertion of jurisdiction will effectuate the policies of the Act. However, as the parties dealt with the cartoons at the

hearing as relevant to the question of jurisdiction, findings relating to the syndicated features are appropriate.

The Respondent received the cartoons published between August 25 and December 8, 1954, from sources outside the state, and by reason of that fact was, during the period in question, engaged in interstate commerce, notwithstanding the circumstance that the purchase of the publication rights was made either from or through a broker in California.¹⁶ A question arises, however, whether the evidence establishes that the cartoons are "nationally syndicated features." Only one of the cartoon features published by the Herald American is clearly identified. It bears the name "Angel." There is no evidence that it is published in any other newspaper. There is also no basis for judicial notice of such publication. This applies with even greater force to the other two features, for these are not even identified by name in the record.

From the nature of the evidence the General Counsel adduced, even if not from any explicit

¹⁶The fact that the publication of cartoons was discontinued during the hearing does not affect the Board's jurisdiction. Nor is it material that the publication began after the discharges and other conduct alleged in the complaint as unfair labor practices, for jurisdiction is not conditioned upon a coincidence in time between the commerce facts and the alleged unfair labor practices, but is based upon the "over-all operations of the employer" (Paul W. Speer, Inc., 94 NLRB 317).

statement made by him, I gather that his position is that a feature is syndicated "nationally" if it is distributed by a syndicate of national scope, even if the feature itself is not distributed "nationally." There may be good reason for grounding the assertion of jurisdiction over a newspaper upon such a theory, but a literal reading of the criterion does not support such a construction. I read the standard embodied in the phrase "nationally syndicated features" to mean that the "features" must be distributed "nationally," and not that there need only be a showing that they are distributed by a syndicate operating "nationally," however limited the distribution of the particular "features" may be. Thus I hold that the evidence in this proceeding does not establish that the cartoons published in the *Herald American* are "nationally syndicated features."¹⁷

¹⁷It was stipulated at the hearing that the three cartoon features were ordered, respectively, from Harry Cook Syndicate (also known as Bell Syndicate, of New York; the *Chicago Sun Times*, of Chicago; and McNaught Syndicate, of New York. Quite apart from my interpretation of the criterion, as set out above, it may be noted that the evidence bearing on the scope of the operations of the three syndicates is scant. "Angel" is attributed to none of the three in the evidence but to an organization named Field Enterprise, Inc., which also supplies features to the *Chicago Sun Times*, a newspaper. It may be that Field Enterprise, Inc., and the *Chicago Sun Times* are one and the same, but the evidence does not establish that fact. The General Counsel presented no evidence that the *Chicago Sun Times* and McNaught Syndicate have distributed

With respect to the jurisdictional issue, one additional matter requires comment, and that is whether the date (October 26, 1954) of The Daily Press decision precludes the application of the criteria announced therein to a case involving claimed unfair labor practices alleged to have occurred prior to the announcement. There have been cases where the Board declined to assert jurisdiction over an employer charged with unfair labor practices allegedly committed before the announcement of applicable criteria. But these were situations where the employer was involved in a prior proceeding in which a position had been taken by the Board, or expressed by one of its representatives, to the effect that jurisdiction would not be asserted on the basis of policies then in effect.¹⁸ This is not such a case. Nor does the holding in the Wave decision preclude the assertion of jurisdiction. To be

features to any newspaper other than the Herald American. Whatever moral conviction one may have about the matter, the fact-finder may not substitute mere opinion for proof. There is evidence that the Herald American published two Bell Syndicate cartoons on September 16, 1954, and no proof that it did so on any other day. The only evidence of publication in any other paper of Bell Syndicate features consists of proof that two cartoons (not identified by name in the record) attributed to that concern appeared in a New York newspaper on November 30, 1954.

¹⁸Yellow Cab Co. of California, 93 NLRB 766; Screw Machine Products Co., 94 NLRB 1609; Almeida Bus Service, 99 NLRB 498; Tom Thumb Stores, Inc., 95 NLRB 57. The Screw Machine case

sure, the Board declined to assert jurisdiction there on the basis of advertisements of "national products." But assuming, without agreeing, that the advertising criterion should not be applied to this proceeding, there is still a vital distinction between the newspaper in the Wave case and the Herald American.¹⁹ Unlike the former, the Respondent subscribes to an interstate news service and publishes news supplied to it by the agency. Such a subscription is clearly analogous to "membership in interstate news services," on the basis of which the Board held in the Press case in 1950 that the policies of the Act would be effectuated by the assertion of jurisdiction, grounding the holding on the fact that such membership constituted a newspaper an instrumentality or channel of interstate commerce. I think that one can hold with equal logic that subscription to and use of news letters of an interstate news agency such as United Press constitutes the

left open the question whether a complaint would be dismissed "solely because the alleged unfair labor practices occurred at a time when the Board would not have asserted jurisdiction over the particular employer involved."

¹⁹In passing, it may be noted that no claim is advanced here, nor is there any evidence, that the Respondent has in any way been misled by the Wave decision or by any of the other cases it cites. It is palpably not the Respondent's position that it engaged in conduct alleged to be unfair labor practices because it assumed, on the basis of the Wave or any other decision, that the Board would not assert jurisdiction.

subscribing publication an instrumentality or channel of interstate commerce.²⁰ It is thus evident that at the times when it is alleged unfair labor practices were committed, the Respondent's operations met a standard prescribed by the Board for the assertion of jurisdiction.²¹ Couched in different terms for specific application to newspapers, that standard has been in effect made part of the current criteria announced in *The Daily Press* case.

Viewing the evidence as a whole, I find that the Respondent's operations affect interstate commerce; that the Board has jurisdiction of this proceeding; and that the assertion of jurisdiction will effectuate the policies of the Act.

II. The Labor Organization Involved

American Newspaper Guild, CIO, admits persons employed by the Respondent to membership and is a labor organization within the meaning of the Act.

III. The Alleged Unfair Labor Practices

A. Prefatory Statement

The Respondent employs approximately 180 persons. These are distributed among the various

²⁰The concluding paragraph of the separate opinion of Board Members Murdock and Peterson in *The Daily Press* case suggests a similar view. With respect to such a position, the majority opinion in the case is not to the contrary.

²¹For this reason alone, without regard to other factors, *N. L. R. B. v. Guy F. Atkinson Company*, 195 F. 2d 141 (C. A. 9) is distinguishable.

establishments maintained by the Respondent, and include cashiers, editorial employees, PBX (switchboard) operators, classified advertising personnel, and advertising salesmen. (The newspaper is printed by mechanical department employees. They are not involved in the allegations of unfair labor practices.)

As stated earlier, C. S. Smith is president of the Respondent and publisher of the newspaper. He has complete control over its policies and operations. Ralph I. Brewer was general manager of the newspaper for many years prior to September, 1954, and, in that capacity, subject to Smith's authority, exercised general supervision over the newspaper's affairs. Because of ill health, Brewer relinquished the post of general manager in September. In that month he was made vice president of the Respondent, and Smith assumed the title and role of general manager.

Other supervisors function on a departmental or otherwise specialized basis. Thus supervision over editorial personnel is vested in W. W. Butler who holds the title of managing editor. He has, and exercises, authority to hire and discharge editorial personnel. Direction of the newspaper's classified advertising is vested in Leonard Lugoff. Lugoff supervises the work of employees in his department, and has authority to hire and discharge classified advertising personnel. Another departmental supervisor is named Louis M. Murray. He has the title of sales manager and functions as

“head salesman.”²² Murray is vested with, and exercises, authority to make recommendations for the hiring and discharge of sales personnel. Smith testified at one point that on some occasions he accepted Murray’s recommendations, and rejected them on others. However, the fact that Murray’s recommendations carry particular weight is evidenced by Smith’s later testimony that he has found Murray to be a “very good judge of people” and that he has approved “practically everyone that he (Murray) has wanted to employ when we had vacancies.”

Smith, Butler, Brewer, Murray and Lugoff are, and have been at all times material to this proceeding, supervisors within the meaning of the Act.

The General Counsel contends that two employees, Robert Clark and Jack Cleland, were, during relevant periods, supervisors within the purview of the Act; and that for that reason certain statements made by these individuals are imputable to the Respondent. The Respondent took the position at the hearing that Clark and Cleland have no such supervisory status. Although both are still in the Respondent’s employ, neither was called as a witness.

²²Smith initially described Murray’s title as “salesman.” He later referred to Murray as “head salesman,” but asserted that “he isn’t the sales manager though.” The fact is that Murray’s name is listed on the Respondent’s printed letterhead with the title of “sales manager” (see G. C. Exh. 1-J).

Clark is stationed in the newspaper's Lakewood office, and has the title of general manager of the Lakewood-Los Altos edition of the Herald American. In addition to Clark, there are four other employees stationed in the Lakewood office. These consist of two sales people, a "circulation man" and a classified advertising employee.

There is observable in Smith's testimony an effort to water down the facts pertaining to Clark's status in order to negate an inference that the latter was a supervisor during the period of alleged unfair labor practices. The way Smith put it at one point, Clark "calls himself the general manager of the Lakewood Herald American" (emphasis supplied). But later Smith testified that Clark "was elected a member of the Chamber of Commerce out there so we gave him a higher sounding title" (emphasis supplied). Moreover, that Clark's title is not merely self-imposed is suggested by the fact that the masthead of the Lakewood-Los Altos edition for October 21, 1954, lists Clark as "general manager." Smith attempted to minimize that with the assertion that "there is a line between Mr. Butler and Clark" (in the list of names in the masthead). However, the masthead for the edition of September 16, 1954, which is somewhat different in composition from the October 21 edition, listing Clark as "local manager," contains no line separating any of the names. As to that, Smith offered the vague statement that "that was the line up (presumably the names on the masthead) at that time

but it changed after that," and that "Mr. Brewer was on vacation and he had just taken off." The suggestion is not made here that Clark's title is decisive of his status or that the presence or absence of a line between names listed in the masthead is significant. (It was Smith who sought to make a significant point of the line.) The features of Smith's testimony, set out above, are mentioned because they reflect on Smith's credibility as a witness. They are reminiscent of his assertion, contrary to the documentary facts, that the newspaper does not publish "anything but local news," and his claim, not important of itself but symptomatic of a pattern in his testimony, that Murray "isn't the sales manager," although the Respondent's letter-head lists that title for Murray.

According to Smith, Clark as "manager of the Lakewood Herald American" before he was given the title of general manager about three weeks before the hearing. While "manager," Smith testified, Clark "had no authority ever to watch their work" (the work of the other four employees). If that is so, then one may ask why Clark had the title of "manager." Be that as it may, at a later point, he stated that before Clark was made general manager, the latter had the responsibility of directing the two sales employees in the Lakewood office to perform given functions. Smith volunteered, however, that Clark "was only exercising his responsibility in a perfunctory manner." Here, too, I am persuaded that this statement is part of a

pattern in Smith's testimony of attempting to dilute the real nature of Clark's status.

In any event, whether Clark performed his supervisory work in a "perfunctory" manner or not is beside the point. Mere neglect by a supervisor of his duties does not constitute him any the less a supervisor within the purview of the Act. The statutory test is whether he is vested with authority to perform various acts, among them, "responsibly to direct" the work of others. Even if one agrees with Smith that Clark, while "manager," had authority only over the two sales people, that is not a controlling factor. The important question is whether the authority he was supposed to exercise, was not merely of a "routine or clerical nature, but required (d) the use of independent judgment." That it was not of a "routine or clerical nature" is manifested by some testimony Smith gave, signifying that the Respondent regards Clark's authority as having substantial importance. Smith testified that Clark, as "top salesman," was "so busy himself that he was neglecting to outline the work for the other salesmen." Then, according to Smith, about a week before the hearing, "we called him in and made complete lists of all customers in that district and told him to allocate certain customers to certain salesmen and them (sic) he was responsible for seeing that those customers were called on." The circumstance that a more efficient and formalized system of direction of the other salesmen was set up only recently does not alter the fact that Clark

had similar supervisory responsibility prior thereto, for, as Smith also testified, “up until last week * * * all he did was he was supposed to supervise them and would make out lists of certain customers and he allocated certain customers to certain salesmen.” Moreover, with respect to the period before the “complete lists” were prepared, Smith’s own testimony indicates that the Respondent looked to Clark for something more than the allocation of “certain customers to certain salesmen,” for Smith testified with respect to a given sales venture: “He (Clark) had one man take over when he could not handle it. That is the only specific case that I know of where he actually paid attention to the man who worked with him, whose work he was responsible for” (emphasis supplied). Here, too, this may indicate that Clark was remiss in his attention to his supervisory duties prior to the preparation of the “complete lists,” but the important point is that it also indicates that he was “responsible for” the work of others and was vested with, and exercised, authority to use selective discretion in the assignment of tasks. Notwithstanding the infirmities in Smith’s evidence, I draw the inference from his testimony as a whole that Clark had such authority and was “responsible for” the work of others when he had the title of “manager,” as distinguished from that of “general manager.” In sum, Clark is now, and was at all relevant times, a supervisor within the meaning of the Act.

Although Smith at one point described Cleland as “editor or head newsman” of the Lynwood edi-

tion, also terming Cleland "city editor of the Compton paper," the publisher denied that any reporters "work under" Cleland and that the latter has authority to give instructions to any other employee. However, it is undisputed that Butler told London, when hiring the latter in July, 1950, that he "would be working under" Cleland, and instructed Cleland to assign London to "some stories" during the coming week. London, who was transferred from the Compton headquarters to the North Long Beach office in July, 1953, testified that prior to his transfer, editorial employees received assignments to cover news events from Cleland, as well as Butler; and that on occasions when Butler was absent, Cleland performed the former's functions. Butler testified in effect that his absences were infrequent and usually of short duration; that "no one" was in charge during such absences, but that on such occasions he would call by telephone and give "instructions on various things" to "various people"; that during his vacations it was usually Brewer "who took over"; and that Cleland's "only activity" other than reporting, "was co-ordination of news." Butler agreed that he "sometimes" used Cleland "as a contact man" and "probably" more so than he did anyone else. Butler's testimony contains no specific denial that Cleland distributed reportorial assignments from time to time, nor does it elaborate on the instructions he gave by telephone to "various people." Bearing in mind Cleland's function as co-ordinator of news and as Butler's "contact man," it is not

improbable that Cleland, upon specific instructions from Butler, performed supervisory functions from time to time as a substitute for Butler while the latter was absent. On the other hand, it is quite likely that such occasions were infrequent and of short duration. Upon close examination, there is no inevitable major inconsistency between London's version of Cleland's duties and that given by Butler, for the latter's testimony does not quite exclude the possibility that Cleland acted for him from time to time, while London's account contains no concrete measure of the extent to which Cleland acted as a substitute for Butler. Against the background of the infirmities in Smith's testimony, mentioned above, and others to be noted later, London's undisputed version of his conversation with Butler in 1950, London's description of Cleland's duties, and Butler's testimony on the subject, I am persuaded, contrary to Smith's claim, that Cleland, at least from time to time, exercises some authority over other employees, and gives them instructions in the form of work assignments. Moreover, it would seem that Smith's own description of Cleland as "head newsman" implies the existence of newsmen subordinate to the "head." The evidence, however, is insufficient to support a finding that Cleland's authority and functions are of such a nature as to constitute him a supervisor within the purview of the Act. There is good reason to believe that Cleland has substituted for Butler from time to time, as London claims, but I draw

the inference that such occasions have been relatively infrequent and that Cleland has spent only a small portion of his time substituting for Butler. An employee does not acquire a supervisory status within the meaning of the Act simply because he spends a small percentage of his time supervising others during occasional absences by his superior. *N. L. R. B. v. Quincy Steel Casting Co.*, 200 F. 2d 293 (C. A. 1). The fact that London and others have received work assignments from Cleland is not of itself decisive, for, unlike the evidence pertaining to Clark, one is unable to determine from the record whether Cleland's functions in that regard were of a routine character or whether he was vested with responsibility for seeing that the assignments were properly carried out. Thus I hold that the evidence does not establish that Cleland is a supervisor within the contemplation of the Act.

The Guild made efforts to organize employees of the Respondent in the spring and summer of 1954. As will appear in more detail later, Sol London, Doris Farley, Raymond J. Ross, and Gloria Hickey either engaged in union activity or manifested their interest in the Guild at one point or another during that period.

It is undisputed that London was discharged in July, 1954, and Hickey, Ross, and Farley in the following month. The General Counsel contends, and the Respondent denies, that they were dismissed because of their union activities or affiliation. The General Counsel also contends that the

Respondent interfered with, restrained and coerced employees, during the month of July, in the exercise of rights guaranteed them by Section 7 of the Act, by various statements and acts of supervisors, including an attempt to engage in surveillance of what it believed to be a union meeting; threats to discharge employees who engaged in union activities; and the granting of wage increases to employees in order to dilute their interest in unionization. There is no dispute that the wage increases were given, but the Respondent denies that any unlawful motive was behind them. With some exception to be noted later, the supervisors to whom the General Counsel imputes acts or statements constituting interference, restraint and coercion, deny that they engaged in such conduct. Evidence bearing on the allegations of interference, restraint and coercion will be considered first below, and will be followed by a consideration of the motivation for the discharges.

B. Evidence of Interference, Restraint and Coercion.

Turning first to the alleged attempt at surveillance, the allegation rests upon the testimony of William L. Sheets, who is employed in one of the community offices of the Herald American. Sheets testified that when he came home from work one afternoon shortly after London's discharge (either on the same day or the next, according to Sheets' estimate), he found Murray there; and that Mur-

ray told him that he had come to see if a union meeting was in progress at the house. Then, Sheets testified, he asked the reason for such an assumption, and Murray replied that he had heard Sheets inviting Ross to his home "to pitch horseshoes"; had assumed that "horseshoes was the code word to signify the intention of calling a union meeting"; and had called on Sheets "to verify it." According to Sheets, Murray then "apologized for his misapprehensions."

Murray, called by the Respondent, agreed that he visited Sheets' home on the occasion in question, but described a different motive for his visit. Stating that he has known Sheets for several years and that the latter "has had a liquor problem," Murray asserted that he had heard Sheets "make a remark (in the office) that he was going to play horseshoes"; that to him (Murray) that meant "opening a keg of nails" (or to "get drunk," as Murray later explained); that Sheets "lives in the same general neighborhood" as he; and that on his way home, as he was convinced that Sheets meant that he was going to get drunk, he stopped at Sheets' house "to see if everything was O.K." Murray stated that Sheets was not there when he arrived; that he talked to Sheets' wife, discovering during his talk with her that Sheets had a "horseshoe pitch" in his home; that Sheets came in about 20 minutes after his arrival; and that he "kidded (Sheets) about the horseshoe incident," explaining, "Bill, I got your remark on the horseshoes and I

thought perhaps there was something I missed, so I came over." Murray denied that he visited Sheets' home in order to see if a union meeting was in progress or that he had been instructed by any of his superiors to go there for that purpose.

If it be asserted that there is some implausibility in Sheets' claim that Murray said that he took the former's reference in the office to horseshoes as a "code word," the fact is that Murray's testimony, too, indicates that he gave a euphemistic interpretation to the remark. Thus the testimony of both witnesses would indicate that Murray did not accord a literal meaning to the remark he claims he heard Sheets make in the office.

Be that as it may, on the credibility issue presented, one matter, among others, to keep in mind is that there is no evidence that Sheets has any interest in the outcome of this proceeding. He is currently in the Respondent's employ. What is more, he appears to have a position of some responsibility, since his name and title of "division editor" are listed in the masthead of the Lakewood-Los Altos edition of the Herald American, and the evidence indicates that he is the second highest paid non-supervisory editorial employee (see G. C. Exh. 16). Against that background, no reason appears why he should give testimony contrary to his employer's interest without a valid basis. In short, Sheets impressed me as a truthful and disinterested witness. In contrast, Murray's testimony reflects some unconvincing features not only with respect to the in-

cident under consideration, but, as will appear later, in connection with Farley's discharge. Why he should not have given a remark about pitching horseshoes a literal construction, rather than interpreting it to mean that Sheets meant to "open a keg of nails" (also a euphemism) does not plausibly appear. Murray offered the explanation that Sheets had been addicted to alcoholism, stating, also, that he "knew that (Sheets) did not play horseshoes." (Admittedly, he found a "horseshoe pitch" at Sheets' home, although claiming to be unaware of its existence before his visit.) However, he agreed that he had not seen Sheets in an intoxicated state for about a year prior to the alleged remark about pitching horseshoes. Moreover, Murray's description of the setting in which he claims the remark was made has a note of vagueness. He professed not to be able to remember to whom the remark was made, although agreeing that Sheets "was talking to someone else" whom he (Murray) did not "associate with drinking." At one point, Murray testified that the remark, "Let us go and pitch some horseshoes," could "have been directed" at him, but he admitted that he did not go to Sheets' home by invitation, also stating that he does not recall whether the statement was in fact made to him. The sum of the matter is that I find Murray's explanation of his visit to Sheets' home to be unconvincing, and I credit Sheets' version of the incident at his home.

Although Murray asserted that he received no instructions from any of his superiors to call at Sheets' home, it may be borne in mind that his attempted surveillance of what he believed was to be a union meeting was closely related in time to other unfair labor practices, to be described later, and the inference is warranted that Murray's visit was part of a pattern by the Respondent of countering or discouraging union activity among its non-mechanical employees. In any event, whether or not Murray acted under instructions from any superior, the fact is that he was a supervisor and represented management in the eyes of the employees, and his conduct is thus imputable to the Respondent. The fact that no union meeting was actually in progress does not affect the conclusion that Murray's attempt to engage in surveillance violated the Act. The attempted surveillance and Murray's statement to Sheets of the purpose of his visit contravened Section 8(a) (1) of the Act.

Sheets also testified that on one occasion Smith telephoned him at one of the community offices and told him that "he had learned of a movement to organize a Guild in the Herald American, and that he would rather close his papers down than sign up with the Guild." Sheets stated that he could not recall the date of the call or whether it occurred before or after London's discharge, but he estimated that the call was made "probably (in) June or July." Smith denied making the statement, asserting: "No such conversation occurred. It would have

been ridiculous on my part to make any statement at all to Mr. Sheets. It did not concern his department." Smith also stated that he "hardly knew Mr. Sheets by sight" at the time in question. Whether Smith "hardly knew" Sheets by sight is not decisive, although it may be noted that Smith's title was then, as it is now, division editor, and that he was then, as he is now, the second highest paid among the non-supervisory editorial employees. Nor may one find guidance to the facts in Smith's inaccurate statement that the Guild's organizational activities "did not concern" the editorial department. As in the case of Sheets' description of Murray's visit, no reason appears why Sheets should fabricate a story contrary to his employer's interest. He is a disinterested witness; Smith is not, and, as pointed out earlier, other portions of Smith's testimony reflect a substantial number of infirmities. These militate against acceptance of his denial that he made the statement Sheets attributes to him. I credit Sheets.

The evidence of Smith's statement is undoubtedly relevant to the question of the Respondent's attitude toward organization activities by its employees, and as background for an appraisal of its motivation for the discharges. The question arises whether a finding should be made that Smith's statement violated Section 8(a) (1) of the Act. I do not make such a finding for reasons set out below. The complaint in effect alleges that the acts of interference, restraint and coercion consist of specific

statements or conduct by named supervisors. Smith's statement to Sheets is not alleged. I do not hold that a finding of violation of Section 8(a) (1) can be made only if the conduct in question is specifically detailed in the complaint and attributed there to a named individual. What I do hold is that there should be some appropriate allegation to support the finding. This appears to be subject to some exception (to be described below) which may be spelled out from a number of cases. But to lose sight of the function of a complaint as staking out the boundaries of the issues, and as the instrument for informing a respondent of the charges made against him, is to invite an attrition of procedural machinery designed by the law to promote fair play and clarity in statement of the issues.

The exception noted above is suggested by cases holding in effect that a finding of violation of the Act is appropriate, although the conduct in question is not alleged in the complaint, if the issue leading to the finding was "fully litigated at the hearing" (*Olin Industries, Inc.*, 86 NLRB 203, 206, n. 10, enforced 191 F. 2d 613 (C.A. 5), cert. den. 343 U. S. 919).²³ However, I do not read these cases as requiring a finding that Smith's statement violated the Act. The disputed factual issue of whether

²³See, also, *American Newspaper Publishers v. N. L. R. B.*, 193 F. 2d 782 (C. A. 7), aff'd 345 U. S. 100; *United Biscuit Company of America*, 101 NLRB 1552, 1568, n. 27, enforced 208 F. 2d 52 (C. A. 8), cert. den. 347 U. S. 934.

he made the statement was "fully litigated" in the sense that both sides adduced relevant evidence bearing on the subject. As pointed out earlier, the statement imputed to Smith bears on issues raised by the pleadings. But that does not mean that the evidence adduced with respect to the disputed factual point raised an issue, in turn, whether Smith's statement constituted a separate violation. Such an issue was not raised, and, therefore, could not have been "fully litigated," for the simple reason that the Respondent has nowhere been put on notice, whether in the complaint or otherwise, that Smith's statement, relevant though it may be to various issues presented by the pleadings, is also subject to a finding that it was of itself violative of the Act.

Hickey and Farley, who were employed in the Bellflower office prior to their discharge, impute statements of a coercive nature to Lugoff. Hickey worked under Lugoff's supervision. According to Hickey and Farley, the statements were made on one occasion during the first half of July, 1954, in the course of a conversation between Lugoff and Hickey in the Bellflower office. Hickey's version, under direct examination, was that Lugoff asked her if she had any connection with the Guild; that she replied that she had none; that he then said that he hoped she had no connection with the organization because employees connected with it would be dismissed immediately; that he then stated that he knew that there were Guild activities going on, "possibly centered in the North Long Beach and

Bellflower offices,” and that Smith had told him “to find out who was responsible” and to discharge all those in the Classified Department if necessary. Under cross-examination, Hickey gave substantially the same version, except that she omitted any reference to Smith’s alleged instructions to Lugoff. Farley’s account of the conversation is less detailed. She stated in effect that she did not hear all of the discussion because she was attending to some duties, and that she “didn’t pay too much attention” to it. Her description of the interrogation of Hickey by Lugoff is that he asked Hickey “did she know anything about it, and who was involved.” Farley, also stated, in substance, that she heard Lugoff say that he was glad that Hickey was not involved, and that Smith was going to discharge all those in the Classified Department if he did not find out who was involved in the union activities. Lugoff testified that Smith did not give him any instructions to discharge anyone “because of union activities,” and in effect denied that he made the remarks imputed to him.

In resolving the credibility issue, I have given consideration to variances between the Hickey and Farley accounts, and to differences between Hickey’s initial version and the one she gave under cross-examination. These factors are not decisive. The testimony of the two women deals with details of a conversation that occurred, according to their account, about five months earlier. Indeed it would be strange, and perhaps a reflection on their credi-

bility, if they were in complete accord on all details of the incident. Upon observation of both, I formed the opinion that they endeavored to give their best recollection and my impression was that they were both forthright witnesses. Moreover, although they differ in details, they are broadly in accord with respect to two significant features: (1) that Lugoff interrogated Hickey on the subject of union activities; and (2) that in substantial effect, if not in precise terms, Lugoff imputed an intention to Smith of finding out who was responsible for union activities, and of discharging all employees in the Classified Department if that were necessary to eliminate union sentiment there. This is reminiscent of Smith's statement, quoted by Sheets, that he "would rather close his papers down than sign up with the Guild." The testimony of Sheets, a disinterested witness, contributes corroborative weight to that of Hickey and Farley. Moreover, as indicated by the testimony of Hickey and Farley, there is good reason to conclude from evidence of a conversation between Ross and Butler on July 12, 1954, that the Respondent was in fact endeavoring to find out which of its employees were engaged in union activities. The conversation will be described in detail later in connection with Ross' discharge, but one may note here that on the occasion in question Butler sought to find out from Ross if the latter had any connection with the Guild. Lugoff's interrogation of Hickey, it seems to me, was cut from the same cloth. Finally, as will appear later, Lugoff gave some implausible testi-

mony on the subject of Hickey's discharge, and this weighs against acceptance of his denial that he made the remarks attributed to him by Hickey.

I find that on the occasion in question, he asked Hickey whether she was connected with the Guild; stated that employees so affiliated would be dismissed immediately; and, in substance, quoted Smith as telling him to find out who was responsible for union activities in the Classified Department, and to discharge all employees in the department if that were necessary to eliminate any sentiment there for unionization. As a consequence of such interrogation and statements by Lugoff, the Respondent violated Section 8 (a) (1) of the Act.²⁴

On July 18, 1954, the Respondent increased the weekly wages of all but two of the non-supervisory employees on its editorial staff.²⁵ In all, the wages of 12 employees were raised. The increases were not uniform, some amounting to \$5, others to \$10, and several to \$15, per week.

²⁴That conclusion is not affected by Smith's denial that he ever ordered anyone "to fire any employee for union activities." The fact is, as will appear, that employees were discharged for such activities. In any event, notwithstanding Smith's denial, Lugoff's statements to Hickey are imputable to the Respondent.

²⁵As nearly as can be determined from the evidence, those who did not receive increases on that date were Donald Desfors and Marion Mattison. The latter's weekly wages were raised by \$10 some 10 days before the general increase.

Both Smith and Butler described the Respondent's purported reasons for the increases. Smith testified that he became aware in or about March, 1954, that the economic condition of the newspaper was deteriorating; that he held a meeting of department heads in March and told them that the newspaper was "losing considerable money," and that they should "cut down" on expenses as much as they could; that at the meeting discussions were also held concerning "more efficiency in the job," prospects for "additional business," and the "possibility of trying to raise rates"; that prior thereto, he had felt that wages of editorial personnel had lagged behind those of employees in other departments, and that he and Brewer had discussed that matter prior to March; that in that month (or in April), subsequent to the supervisors' meeting described above, taking a "more active interest" than previously, he brought the matter of wage scales up "rather forcibly" at a meeting with Brewer and Butler, telling them that he "didn't want cheap people" and "would rather have one high priced man than three cheap ones"; that Butler expressed his belief that the Herald American was "paying more than other newspapers in the neighborhood"; that at that time, he (Smith) "wasn't engaged actively in handling the paper and * * * didn't want to step in and take over arbitrarily"; that he raised the question of wages again later and "insisted on a survey" of wage rates paid by such newspapers; and that in June or July Butler reported the re-

sults of such a survey to the effect that the other newspapers "were either paying about the same prices that we were or less." (At one point in his testimony, Smith stated that he requested the survey in July or August. Elsewhere he testified that the survey results were reported to him in June or July. The increases, as noted earlier, went into effect on July 18.)

Putting an evaluation of Smith's testimony aside for the time being, it is difficult to determine from Butler's testimony when definitive discussions were held between him and Smith on the subject of increases for the editorial employees. Stating (in some contrast to Smith) "I think there was a little conversation about wages—it didn't amount to much—around March," Butler testified that he and Smith had discussed the subject over a period of four or five months preceding the increases; that "at least as early as May, perhaps earlier," Smith took the position that wages of editorial employees should be increased; and that he (Butler) replied that he hoped that the Respondent's financial position would warrant the increases in the fall, but that he was fearful that it would be difficult to publish the newspaper "if we had to pay more and then cut down on the number of people." At another point in his testimony, Butler agreed to a suggestion that the "first significant conversation which eventually resulted in the wage increase" took place in May, but when asked to describe what was said, he replied, "That is difficult to remember

because we had several conversations." Later, agreeing that he had a "specific conversation" (with Smith) relating to the increases, he testified that it "would be very difficult to say" when it occurred. Additional questioning on the subject of such a conversation brought the reply, "I am not sure of my recollection, but if I were trying to place it, I would say it was probably in June." On that occasion, according to Butler, Smith told him that the wages of the editorial employees "should be higher," and he replied that perhaps Smith "was right and that I would look into it and bring a report back to him as to what I thought it should be." Butler stated that he made a survey and reported orally to Smith "somewhere around the middle of July" that Smith "was correct, that we needed some wage increases."

According to Butler, his survey took the form of inquiries concerning wages paid by four nearby newspapers—one in Bellflower, another in Norwalk, a third in Huntington Park, and the fourth in Downey. He stated that he could not recall the name of the Downey newspaper, and that his information concerning wages paid by the Bellflower newspaper came from an interview he had with a former employee of the paper, but testified, "Now, whether that (the interview) was at that time or not, I am not positive." From the interview, Butler stated, he gathered that the Bellflower paper paid "between \$5.00 and \$10.00 a week higher" than the Herald American. Concerning his inquiry about

the Huntington Park paper, he testified: "I believe I looked it up, as far as I could find, the record of what was being paid in Huntington Park and I remember discussions (sic) wages with one of the reporters of the Huntington Park papers, who came in to see me." Butler described the information from the reporter as "a little bit uncertain." As nearly as he "could understand it," Butler stated, he learned that the rate for beginners was lower on the Huntington Park paper than for comparable personnel on the Herald American, but that the former's wage rates "for the long-time people would be a bit higher." Butler did not describe the form his inquiries took with respect to the Norwalk and Downey papers, but he stated that wages on the former were about \$5.00 to \$10.00 higher than those paid editorial employees by the Herald American.

A number of factors support the General Counsel's claim concerning the wage increases. Of these, the timing stands out in significance. I have no doubt that in the month of July, the Respondent was considerably concerned over union activities by or on behalf of the Guild. Evidence of this may be found in Smith's statement to Sheets; Butler's interrogation of Ross on July 12; Lugoff's conversation with Hickey during the first half of July; and Murray's visit to Sheets' home about July 17 or 18. There is good reason to believe that by July 17, the date of London's discharge, the Respondent suspected that the editorial department was a center of union activities in the person of London. He was

employed in the North Long Beach office, and in that connection, it will be recalled that some days before London's discharge, Lugoff told Hickey that Guild activities were "possibly centered in the North Long Beach and Bellflower offices." The circumstances of London's discharge will be discussed later, but the conclusion may be noted here, supported by reasons to be set out in another section of this report, that he was discharged for union activities on July 17. The wage increases were put into effect on the following day.

The conclusion that this was no mere coincidence is bolstered by factors in the testimony of Smith and Butler, as well as the quality of evidence they gave. According to Smith, the Respondent was not only "losing considerable money" early in the year, but its "profit and loss figures for the year * * * were very bad" in mid-summer, showing a loss of about \$5400 by the middle of August. Yet at about the very time when the financial condition was allegedly "very bad," the Respondent gave increases totalling \$125 per week, increasing its financial outlay at the rate of \$6500 per year. There is no evidence that any employees had requested that their wages be raised, and in the absence of such evidence, it is pertinent to inquire why the Respondent should select the time, of all others, when it is claimed that the "profit and loss figures * * * were very bad," to raise the wages of all but two of the Respondent's non-supervisory editorial employees. To be sure, there are generalizations in the testi-

mony of both Smith and Butler to the effect that it was Smith's policy to effect efficiency and economy by paying higher wages to a reduced staff, but if that is so, it seems strange indeed that the policy was not put into effect in March when the newspaper was, according to Smith, "losing considerable money," but was deferred until a period, months later, when the Respondent was manifestly concerned over sentiment among its employees for the Guild. Smith endeavored to explain away the delay by stating that he was not "engaged actively in handling the paper" in March, and "didn't want to step in and take over arbitrarily which I did do in July and August." In the light of my impression of Smith, the explanation has a tenuous cast. During his testimony, he was emphatic and positive in demeanor and assertion, impressing me as an individual who is disposed to seek domination over a situation with which he is concerned. He had complete control over the newspaper in March, notwithstanding his claimed abstention from active direction of its affairs, when, as he asserts, he raised the wage question "rather forcibly" with Brewer and Butler, and one may well entertain a substantial doubt that the alleged delay was merely the product of his forbearance. As against the subjective claim of such forbearance advanced now, there is the objective fact that the increases were granted to editorial employees in a setting of unfair labor practices, following by one day the discharge of London, an editorial employee, because of his union

activities. I think that the objective facts are a sounder guide to an appraisal of the Respondent's motivation for the increases than the claim that they were delayed because Smith did not wish previously to intrude himself "arbitrarily" into effectuation of management policy. Moreover, it is difficult to see why it would be arbitrary for an individual having complete control over an enterprise, which is manifestly his in fact if not in form, to require his subordinates to put a given policy into effect which he believes to be right as a good business practice.

There is an additional, and important, reason for questioning the Respondent's claim that the increases were disassociated from the union sentiment among the employees. Implicit in Butler's testimony, at least, is the claim that the increases were given to bring the wages of editorial employees into line with those paid by neighboring newspapers. The results of the alleged survey, as Butler described them, would indicate that he learned that editorial personnel of two of the papers paid higher wages than the Respondent, and that wages paid by a third were higher for some employees and lower for others. (Butler did not specify what he learned with respect to the fourth newspaper allegedly surveyed.) Also implicit in Butler's testimony is a claim that he reported his findings to Smith. Yet, in contrast to the alleged findings, it is a striking fact that Smith testified that Butler reported "that they (the other papers) were paying about the same

prices or less” (emphasis supplied). The discrepancy is such that it leads to a substantial doubt, to say the least, either that the survey was made or that Butler made a report to Smith. I find myself unable to view either the alleged survey or the report as a reliable basis for findings.

Finally, before setting down a definitive conclusion concerning the increases, some comment on the quality of Butler’s testimony is appropriate not only as a basis for evaluating the motive for the increases, but because such an evaluation has a bearing on the evidence pertaining to London’s discharge, which will be discussed later. A pattern of evasiveness runs through Butler’s testimony. He gave his evidence with cautious demeanor, but I concluded that the caution was the product of an intention to avoid committing himself rather than of a desire to testify accurately in areas where the Respondent’s interest could be adversely affected. Even with respect to so basic and undisputed a matter as the fact that the increases were granted—a fact obviously within his personal knowledge—when asked whether increases were granted to editorial employees in July, 1954, he replied, with cautious demeanor: “Yes, my understanding is there were, yes” (emphasis supplied). He seemed careful to avoid commitment when efforts were made during his examination to determine concretely when the question of granting the increases first began to take crystalized form—an important question if one bears in mind the setting in which the

wages were raised. The pattern of evasiveness was quite pronounced when inquiry focused on details of his alleged survey. He professed a loss of recollection as to the name of the Downey newspaper, although he has worked in the area for many years, and little more appears in his description of his inquiries than that he spoke to an employee of one paper and to a former employee of another—a somewhat casual approach to the survey which Smith claims he “insisted” upon. The type of caution described above was manifested in his references to the information he claims he received from the former employee. In that connection, he testified: “I believe I talked to a former employee if I remember correctly. I am not certain, however * * *. The thing I am not quite clear on—at one time I heard that the society editor on the Herald Enterprise (a neighboring newspaper in Bellflower) was disengaged and I interviewed her about wages. Now, whether that was at that time or not, I am not positive.” Thus his testimony even leaves open the question whether the alleged conversation with the former employee of the Herald Enterprise was part of his alleged survey, and if the survey was made, one may ask whether it consisted of anything more than a chat with an unidentified reporter for a Huntington Park paper, who, according to Butler, gave him information that was “a little bit uncertain.” Butler’s testimony offers no safe guide to an answer to the question. It is unnecessary to pursue other details of Butler’s testimony, for what has been said sufficiently exempli-

fies my conclusion that he was not a forthright witness.

The sum of the matter is that the testimony of Smith and Butler, and its quality, contribute to the conclusion that the wage increases were timed to act as a deterrent to organizational activities among the Respondent's employees, thus interfering with rights guaranteed the employees by Section 7 of the Act. I find that by putting the wage increases into effect the Respondent violated Section 8 (a) (1) of the Act.

C. London's Discharge.

London entered the Respondent's employ as a reporter in July, 1950. His salary at that time was \$50 per week. He was employed in the Compton office until July, 1953, when he was transferred to the North Long Beach office, remaining at the latter place until his discharge on July 17, 1954. He was the only editorial employee stationed in the North Long Beach office. The other personnel there consisted of a classified advertising employee, two or three salesmen, and a circulation manager. During London's employment, he received a number of increases, the last of them in March, 1954, when his wages were raised \$5 per week. At the time of his discharge his weekly salary was \$75.

While employed in Compton, London and other editorial employees stationed there customarily worked until about 7 or 7:30 p.m. each Tuesday and Wednesday. This was necessitated by the fact

that the Thursday issue of the newspaper went to press on Wednesday, which is known as a "make-up" day, that is, a day when the newspaper is made up for printing. Mondays and Thursdays were relatively slack periods for the Compton editorial personnel, and they were given an afternoon off on either one of those two days to compensate for the extra time worked on Tuesdays and Wednesdays. Following that practice, London was given Thursday afternoon off. The Compton office was open each Saturday (which is also a "make-up" day in preparation for the Sunday issue). While in Compton, London worked a full day on Saturdays.

After his transfer to North Long Beach, London customarily worked late on Tuesday nights, spending a varying number of hours at the Compton office, sometimes until midnight or later. The time there was devoted to preparing and turning in copy and in "make-up" work. For some time after his transfer, it was London's practice to come to the Compton office from North Long Beach about 6:30 p.m. and spend the remaining late work hours in Compton. At one point or another, he altered this practice to the extent that he usually came to Compton about 10 or 11 p.m. for the purpose of turning in his copy and performing related "make-up" work, remaining at the Compton office for varying periods of time, sometimes finishing his work as early as about 10 p.m. and at other times at midnight or later. On about six or seven

occasions during his year at North Long Beach, he left "the office" (whether North Long Beach or Compton is not made clear in the record) at about 8 p.m. on Tuesday, worked at home after that hour typing stories, and brought the copy to the Compton office on the following morning.

The North Long Beach office was closed on Saturdays, and London did not work there on those days. He nevertheless worked Saturday mornings, proceeding directly to the Compton office to turn in copy and perform "make-up" work, and usually arriving there at about 6:30 a.m.²⁶ On such days, he usually finished his work before noon (sometimes, the record indicates, by or before 11 a.m.), depending "on conditions in the back shop" (presumably meaning conditions in the press shop). He did not work on Saturday afternoons while attached to the North Long Beach office. While stationed there, he took Thursday afternoons off, commencing to do so shortly after his transfer and continuing the practice until his discharge. (The question whether he had permission to do so will be considered at a later point.)

London began to engage in organizational activity among the Respondent's employees on behalf of

²⁶London testified that on Saturdays he "usually got there (Compton) at 6:30," without specifying "a.m." or "p.m." From the context of his testimony as a whole, it is evident that he meant that he usually arrived in Compton on Saturdays at 6:30 a.m.

the Guild about the end of April or early in May, 1954, soliciting memberships for the Guild, and securing some signatures on applications for membership. That he was active in July is evidenced by the fact that he solicited Cleland to join the Guild on July 10, pointing out what he regarded as advantages of unionization, and giving Cleland an application card. ²⁷

There is no doubt that Butler was aware that London engaged in union activities. Butler himself

²⁷London gave a detailed (and undisputed) account of the conversation. Reference need be made to only some of its aspects. On the occasion in question, before London revealed that he was active on behalf of the Guild, Cleland asked him whether he knew anything about a "Guild drive" at the paper. The General Counsel apparently seeks a finding that Cleland's inquiry violated Section 8 (a) (1). As stated earlier, the evidence does not establish that Cleland was a supervisor within the meaning of the Act. It need not be decided whether the finding sought may be based on the fact that Cleland exercised some authority over others, and that when London was hired he was told by Butler that he "would be working under" Cleland. A finding that Cleland's inquiry violated the Act would neither add to, nor detract from, the remedy to be recommended below. The evidence will not support a holding, apparently also sought by the General Counsel, that Cleland informed the Respondent of London's organizational activities, and I make no such finding. Nor do I base findings of unfair labor practices made herein on the theory that any statements by Cleland are imputable to the Respondent. However, the conversation between London and Cleland is admissible as establishing the fact of London's organizational activities during a period relevant to issues in this proceeding.

conceded as much, although putting it in this fashion: "I had only a vague report which was only indirectly that he had been spending working time down there, soliciting membership for the union." Then he stated, "I believe it was Mr. Brewer (who gave him the report) but it was indirect." In any event, it is evident from the whole record, including the testimony (to be described later) of Oney A. Fleener, one of the Respondent's employees, that Butler knew at the time he discharged London that the latter had engaged in organizational activities on behalf of the Guild.

Butler discharged London shortly after the latter had completed his "make-up" work in Compton on Saturday, July 17. The managing editor denied that he dismissed London because the latter engaged in union activities. Butler testified that he had once warned London "about leaving early on Thursday"; and that thereafter, he had come to the North Long Beach office shortly before noon on a Thursday (about a week before the dismissal, according to Butler's estimate), had found London absent, and had been informed by others in the office that London had gone for the day. The sense of Butler's testimony, taken as a whole, is that he discharged London because the latter took the afternoon off on the Thursday in question in disregard of a previous warning not to follow that practice. The alleged justification does not stand up under scrutiny in the light of factors set out below.

London testified that in or about August or September, 1953, he told Butler that he "had been taking off on Thursday afternoons" because he "had been working late on Tuesday nights"; and that Butler replied, "I know that as well as you and as long as you turn in your copy, that is all we require." Butler's testimony contains no express denial of the quoted statements. But quite apart from that circumstance, there are factors which render plausible London's assertion that Butler knew and approved the former's practice.

As Butler himself put it, he "recognized the right of the employee, if he had some duties that were out of working hours, he might go home a little earlier." Although Butler also asserted that such a practice is different from London's custom, the fact is that there appears to have been a policy, in general, under which editorial employees took compensatory leave for extra working hours. This conclusion finds additional support in the undisputed evidence that editorial personnel in the Compton office were given an afternoon off on Mondays and Thursdays to compensate for evening work on Tuesdays and Wednesdays. As London worked late on Tuesday nights, while stationed in North Long Beach, it is not implausible that Butler should recognize that it was equitable for London to take compensatory time off each Thursday afternoon, even if London, in contrast to his practice while stationed in Compton, was not required to work on Saturday afternoon.

More to the point, it may be borne in mind that London followed the practice of taking Thursday afternoons off substantially throughout the entire year that he was stationed in North Long Beach; and that Butler, in the course of his duties, customarily visited that office on Thursdays at varying times between 10:30 a.m. and 2 p.m. Yet Butler, here also manifesting the vagueness which characterizes so much of his testimony, stated that "it was quite some time" after London's transfer that he became aware that London was not at work on a Thursday afternoon; that he could not recall when that was; that he "couldn't swear" whether it was in 1953 or 1954; and, finally, that it was "probably" in the spring of 1954 that he first became aware of the matter. Bearing in mind that Butler called at the office each week on the very day that London absented himself, I think it improbable that Butler would not become aware of London's practice much sooner than the managing editor's testimony suggests. Moreover, Butler's claim that he warned London about the practice is also cloaked in vagueness. The managing editor testified that "at least four or five times," when he called at the office, he noticed that London was absent in the afternoon; that on one or two occasions, he inquired of others in the office as to London's whereabouts, and was told that the employee had gone for the day; that as a result of the latter's absences, he became "suspicious of what (London) was doing"; and that he warned London about the practice. As to the terms of the alleged warning, Butler stated that his

“memory of the conversation is very vague as to what actually was said,” but he nevertheless testified that he called London’s attention to the fact that he had Saturday afternoons off; and that he told London that “we were supposed to be on the job five and a half days in the week,” and that “he (London) should not be leaving early on Thursday any more.” Asked to fix the time of the alleged warning in relation to the last occasion when he states that he found that London had gone for the day, Butler stated, “If I were guessing, I would say it would be between one and two months, but I couldn’t swear to it,” and followed this with a statements that his “recollection is very vague on the point.” Thus, according to the estimated time of the alleged warning, if one may term Butler’s guess an estimate, one is in effect asked to believe that London was able to take each Thursday afternoon off, without permission, for almost an entire year before Butler got around to warning him to stop the practice. A reasonable regard for probability militates against such a belief. Moreover, as will appear, at the time of the discharge, Butler said nothing about London’s practice of taking Thursday afternoons off, and this contributes support to the conclusion that Butler was aware of, and had approved, London’s absences. In sum, I conclude that London’s account of his conversation with Butler in or about August or September, 1953, is credible; that henceforth London took such afternoons off with Butler’s knowledge and permis-

sion; and that Butler did not thereafter warn him to stop the practice.

What is more, there are additional indications in the record, stemming from undisputed testimony, that the justification for the discharge now put forward by Butler is no more than an afterthought. As a preface to what follows, it may be borne in mind that London worked for the Respondent for about four years; and that during that period he received increases totalling 50% of his starting salary, the last increase being given to him only a few months before his dismissal. When Butler discharged London, the latter asked for an explanation, stating that he did not think it right that he should be discharged "without notice or explanation." Butler replied, "I cannot tell you why," and when London continued to press for an explanation, Butler stated, "All I can say is that you thought more about other things than you did of the paper." London stated that he was not "satisfied with that," to which Butler replied that if London wanted anything else, he would have to see Smith. London asserted that he would do so and left. (London's account of this conversation with Butler is undisputed. When Butler was asked during his examination whether he recalled what he said to London, he replied, "Not clearly, no, I don't think so.") Shortly thereafter, that same day, London went to Smith's home and talked to the publisher. Butler was present. London asked Smith for an explanation for the dismissal, and the latter replied that

the reason was that he had not been satisfied with London's "political reporting." Then, when requested by London to specify "what reporting," Smith answered, "Oh, well, just generally speaking." Thereupon London asked Butler why that had not been mentioned to him during the past two weeks, and Butler answered that "there had been a general deterioration." In response to a complaint by London that he had been dismissed "without notice, after working on the paper for four years," Smith stated that he would give London "two weeks' pay instead of notice." London left after some additional conversation during which he remarked that both he and Smith knew the "real reason" for the discharge, to which Smith replied, "Well, what is it then?" (London testified that he could not recall what answer he gave to that.)²⁸

It will be observed that at no point was London told either by Smith or Butler that he was dismissed because he had taken time off without permission. The sense of Butler's testimony is that

²⁸London's account of the conversation at Smith's home is essentially undisputed. Butler gave no version of the discussion, and about all that appears in Smith's testimony on the subject is a denial that London told him that he had been "discharged for union activities" or that the employee asked whether these had been "the cause of the discharge." The important point to bear in mind is that it is undisputed that Smith told London that the latter's "political reporting" was the cause of the discharge, for this differs from the reason given by Butler in his testimony.

that was the reason for the dismissal; yet Smith told London that the cause was the latter's "political reporting." Why, it may be asked, this disparity? This shifting about of reasons bespeaks a search for a pretext to justify the dismissal and to conceal its real motivation. It is also well to recall that when London initially asked Butler for a reason for the discharge, the latter replied, "I cannot tell you why," and later referred London to Smith, thus in effect telling London that he (Butler) had been forbidden to give London the reason. Now, why should Butler follow such a course unless it was the Respondent's purpose to hide from London the real basis for his dismissal? I am impelled to the conclusion not only, as found above, that London had Butler's permission to take Thursday afternoons off, but that the justification advanced by Butler for the dismissal is no more than an afterthought.

One of the Respondent's employees, Oney A. Fleener, had a conversation with Butler about an hour after London's discharge. Fleener and Butler gave differing versions of their talk. According to Fleener, he remarked to Butler that London had told him that he had been discharged because he belonged to the Guild. Describing Butler's reply, Fleener testified: "Mr. Butler said he (London) was discharged because he was working for the union instead of working for the newspaper. That is as near as I can remember although it isn't the exact quotes." From other testimony Fleener gave,

it appears that he construed Butler's statement as meaning that London had been neglecting his duties by devoting time when he should have been working to organizational activities. (The question at issue here, however, is not the interpretation that Fleener placed on Butler's remarks but what Butler said.) Butler's version of the conversation is that Fleener asked him whether London had been dismissed and if the "union (had) anything to do with it"; that he replied, "Well, no, not as to the dismissal"; that Fleener then asked whether London was "mixed up with the union"; and that he (Butler) said, "I don't know anything about it other than I had some reports that he was soliciting membership in the office during the time that he should have been working."

Fleener appeared to me to be, like Sheets, a disinterested witness. While he initially reflected a disposition to interpret Butler's remarks, rather than to quote Butler, when the matter was brought into focus by a request that he state what Butler had said, Fleener gave what is, in my judgment, his best objective recollection of Butler's language. In contrast, Butler's testimony, taken as a whole, reflects a substantial amount of evasiveness. Apart from my appraisal of both witnesses, upon close examination, what Butler told London only about an hour earlier tends to support Fleener. It will be recalled that Butler told London: "All I can say is that you thought more of other things than you thought of the newspaper." Although couched in

obscure terms, it is evident that what Butler meant was that London thought more of union activities ("other things") than he thought of the newspaper. Such an attitude is closely kindred in spirit to a statement that London "was discharged because he was working for the union instead of working for the newspaper." In the light of my impression of Fleener, and against the background of the whole record, including the evasive content of significant portions of Butler's testimony, I find that Butler made a statement to Fleener to that effect.²⁹

If one looks at the record in the whole, the true motivation for London's discharge appears. Butler's statement to Fleener supports the conclusion

²⁹From the tenor of the Respondent's cross-examination of London, I gather an implication by it that London was discharged because he solicited the membership of other employees in the Guild during working time. It is unnecessary to canvas details of London's cross-examination, but several matters may be noted. First, the evidence does not establish that London neglected his duties for organizational work. Second, the Respondent had no rule prohibiting discussion by its employees of union matters during working time. Employees engaged in "social talk" during business hours, and it is obvious that the Respondent did not prohibit such conversations. Plainly, in that setting, it would be discriminatory to penalize London merely for solicitation of memberships during working time. Third, for the Respondent to claim that London was discharged because he devoted working time to organizational activities would be but another shift in its position concerning the reason for the

that London was discharged because of his adherence to the Guild and his union activities. But there is far more than that in the record to guide one to decision. From the tenor of Lugoff's statements to Hickey within a period of about two weeks prior to the discharge, it is evident that the Respondent suspected that the North Long Beach office, London's place of employment, was a center of union activity, and that the Respondent was seeking to identify any employee so engaged and to dismiss him. The fact that London was discharged so soon after this expression of the Respondent's attitude and intention is no mere coincidence. Supporting this conclusion is not only Butler's remark to Fleener, but his statement to London only about an hour earlier that London was being dismissed be-

dismissal. Butler advanced no such claim. On the contrary, he testified in effect that he told Fleener that London's discharge was unrelated to the latter's union activity. Moreover, it is undisputed that Smith told London that the dismissal was based on the quality of the employee's "political reporting." The Respondent also makes the point that it had a rule prohibiting use of its telephone by employees for personal business, and that London, who testified that he was unaware of the rule, used the telephone on a number of occasions to make appointments with other employees in relation to organizational activities. If the Respondent now contends that London was discharged for violation of the rule, that, too, is a shifting position, and reflects on the reliability of the claim that London was discharged for lawful cause. If anything is clear, it is that London was not discharged for unauthorized use of the telephone.

cause he “thought more about other things than * * * of the paper.” Standing alone, this statement is obscure, but in the light of the whole record, I am unable to view it as anything more than a veiled allusion to London’s union activities and to the fact that he was being discharged because of them. What is more, strong indicia (perhaps the weightiest) of the real motivation for the discharge are to be found in the very fact that the Respondent has endeavored to conceal it. This policy of concealment is clear in the light of the evidence that Butler refused to give London an explanation for the discharge, instead referring him to Smith; that Smith then told London his dismissal was due to the quality of his “political reporting”; and that Butler gave a different reason in his testimony, which, I am convinced, is now advanced *post hoc, ergo propter hoc* as a pretext for the dismissal. These tangled justifications, the one given by Smith to London, and the other by Butler at the hearing, compel the conclusion not only that the Respondent has cloaked the real motivation for the dismissal, but that the reason was London’s adherence to the Guild and his participation in organizational activities on its behalf. Thus I find that in discharging London, the Respondent violated Sections 8 (a) (1) and 8 (a) (3) of the Act. I also find that Butler’s statement to Fleener violated Section 8 (a) (1) of the Act.³⁰

³⁰This conclusion is unaffected by the fact that Fleener construed Butler’s statement as meaning that he had discharged London because the latter

D. The Discharge of Ross, Hickey and Farley.

Ross entered the Respondent's employ as city editor of the Lakewood edition on or about March 22, 1954. Butler was his supervisor.

On July 12, 1954, Butler and Ross attended a meeting of the Chamber of Commerce in Lakewood. Shortly after they left the meeting, upon their return to the parking lot where they had left their respective cars, Butler engaged Ross in conversation about the Guild. Ross had applied for membership in the organization toward the end of April or the beginning of May, but he had not as yet been notified of his acceptance at the time Butler spoke to him. On the occasion in question, Butler said to Ross: "I hope you haven't been sucked into this Guild, have you." Ross asked Butler, "Guild—what do you mean?" Butler replied that "it was a newspaper Guild," took a Guild membership application from his pocket, showed it to Ross, and said, "One of my boys was approached with this and of

had neglected his duties to engage in union activities. Even if one ignores the whole record, one may reasonably construe Butler's statement as meaning that London was dismissed because he was more devoted to the union than to the newspaper. Be that as it may, Fleener's construction is not controlling on the question of the legality of Butler's statement. One should look to the words themselves for an appraisal of their legality. In any event, they do not stand in isolated context, for they follow a pattern of inhibiting expressions by the Respondent's supervisors on the subject of union activities.

course, he brought it to me right away and I just wondered if you had been connected with it." Ross replied, "No, I guess I am too new. I guess they do not trust me." Butler then observed that he had always associated the Guild "with the Leftist movement," and particularly so since a certain individual had appeared on the picket line during a strike at a newspaper in Huntington Park. (Ross' account of the conversation is undisputed.)

Butler's characterization of the Guild as "Leftist" did not, of course, violate the Act, since the managing editor's observation in that regard is protected comment within the meaning of Section 8 (c). This is not true of what was in effect an inquiry by Butler of Ross whether the latter was a member of the Guild. The interrogation should not be viewed in isolated context, for it was part of a pattern of unfair labor practices during the month of July, reflecting a policy, evidenced by the attempted surveillance by Murray and Lugoff's statements to Hickey, of prying into the organizational sentiments of the employees and of endeavoring to identify members of the Guild in order to discharge them. Butler's interrogation of Ross violated Section 8 (a) (1) of the Act.

Tuesday was the busiest day of the week for Ross. His situation in that regard was not significantly different from that of London. It was Ross' custom to carry his copy from the Lakewood to the Compton office at one point or another each Tuesday, and to remain in Compton until his work was completed,

usually between 2:00 a.m. and 4:00 a.m. on Wednesday.

Ross did not wear a jacket to work on Tuesday, August 17, 1954. His upper outer garment was a sport shirt of light buff color. Before he left for business that day he wore a Guild button which was pinned to the upper portion of the pocket located on the left half of the front of his shirt. Judging by a button of the "same design and construction" in evidence, the one Ross wore was about an inch in diameter, bore an insignia and the name "The American Newspaper Guild" in black lettering on a white field. Ross arrived at the Lakewood office at approximately 10:30 a.m. that day and wore the button throughout the day at his work. The Button was not hidden from view. This was the first time that Ross wore a Guild button while at work.

Butler came to the Lakewood office at about 4:00 or 4:30 p.m. on August 17. Ross was busy with some work at the time. Butler stood by for about 10 or 15 minutes and then asked Ross to step into the street. Both men went outside, and there Butler discharged Ross, assigning as the reason that Smith had directed that the payroll be cut for reasons of economy. Indicating the Guild button,³¹ Ross re-

³¹Ross testified that he pointed to his button; according to Butler, Ross "pulled his shirt out so as to show it." As the button was not hidden and was worn in view on the upper left portion of Ross' chest, it does not quite appear why Ross should

plied that both he and Butler knew that he was being dismissed because he was wearing it. Butler repeated that he had been told that an economy drive had gone into effect, and said that Ross could interpret that any way he wished. Ross asked Butler whether he should "finish out the rest of the edition" (which would require him to work that night and the early morning hours of Wednesday), and the managing editor said that that was a matter Ross should discuss with Smith.³²

Ross telephoned Smith and asked the latter why he was being discharged. Smith replied that an "economy drive" was under way, stemming from his insistence three or four weeks earlier "on a retrenchment"; that three or four persons had been laid off; that he had directed an additional retrenchment; that that was the reason Ross was

have to pull out his shirt "so as to show" the button. In any event, the subsidiary issue of the manner in which Ross indicated the button need not be resolved, since a resolution either way would not affect the conclusion reached with respect to the legality of the discharge.

³²Both Butler and Ross described the conversation. Their versions are not in significant conflict. In resolving several variances, all of a minor nature, I have adopted the version which appears to me to be the more probable. For example, Butler testified that he told Ross to use his own judgment with respect to completion of his work for the day. However, it is undisputed that Ross called Smith and discussed the matter with the latter. This tends to corroborate Ross' testimony that Butler referred him to Smith.

being laid off; that he thought it only fair that Ross "should be let go first" because the latter "was the newest employee in the department"; and that Ross "would be rehired if business warranted it." Ross asked Smith whether he should "finish up that edition," stating that Butler had told him to take the matter up with Smith. The latter told Ross to use his own judgment. Ross finished his tasks, working, as had been his custom, into the early hours of Wednesday morning.

On the following Friday or Saturday Ross was paid for the full week, although he had worked only part of it, and was given an additional week's pay. Ross' salary at the time of his dismissal was \$75 per week. He has never been called back to work by the Respondent.

Denying that he discharged Ross because the latter engaged in union activities, Butler testified in substance that he did not notice the union button until Ross directed his attention to it, as described above. Smith denied that he was aware at the time of Ross' discharge that the employee had engaged in union activities. Both Smith and Butler testified in substance that Ross was discharged as part of a program of reducing staff because of economic considerations. As this is the reason in effect given by the Respondent for the discharge of Hickey and Farley, repetition in analysis of evidence will be avoided by setting down some prefatory findings pertaining to Hickey and Farley prior to a discussion of the claim of economic necessity and of the

question of the motivation for the discharge of the three employees.

Hickey entered the Respondent's employ in March, 1954. She worked in classified advertising and was stationed in the Bellflower office. Lugoff was her supervisor. Brewer hired Farley on June 28, 1954. She was employed as a cashier and PBX operator in the Bellflower office. Farley does not appear to have had any immediate supervisor below the rank of Brewer, who at that time was general manager.

Hickey wore a Guild button at work on the afternoon of August 16. Farley also had such a button in her possession but refrained from wearing it on that date. There was a union meeting at Hickey's house that night. Farley attended. The evidence suggests that there was some discussion at the meeting relating to the wearing of Guild buttons, but there is no concrete elaboration of the matter in the record. In any event, on August 17, both Hickey and Farley wore their respective buttons, while at work, throughout the day. They were the only employees in the Bellflower office who did so. The evidence does not establish on what part of her person Hickey wore the button, but it is reasonably inferable from the context of surrounding circumstances that the button was exposed to view. Farley wore her button exposed on her belt.

At about 6 p.m. that day, following her daily custom, Hickey telephoned Lugoff, who was at the

Compton office, in order to report her business volume for the day. Lugoff asked if she would remain at the Bellflower office until he came there, as he wished to talk to her. She replied that she was unable to do so, but offered to come to the Compton office later that night. Lugoff told her not to come, stating that he would see her in the morning.

Lugoff came to the Bellflower office at about 9 a.m. on August 18 and spoke to Hickey who was wearing a Guild button at the time. Farley, who was also wearing a union button, was in the vicinity, hearing only part of the conversation because she had duties which required her attention. Lugoff gave Hickey a paycheck covering her full salary for that week, although she had worked only part of the week, and told her that Smith had "ordered" her discharge as an economy measure. Hickey stated that her discharge was due to the fact that she was wearing a Guild button, and that she was not so "stupid" as to believe the reason given for her dismissal. Lugoff said that he was sorry that he had to discharge her, that her work had been satisfactory as far as he was concerned; that "there wasn't any personal feeling" but "was sorry if (Hickey) was mixed up in the Guild because that (sic) they would not be able to do anything" for her. Hickey expressed the view that she could not be discharged because of "Guild activities," and Lugoff replied that he had "had a situation like that some fifteen years ago" in connection with a Hollywood newspaper, that "nothing ever came of

it,” and that “they can’t do anything for you.” At one point or another while Lugoff was in the office, Farley told him that she was wearing a Guild button, and in effect asked him whether he was going to discharge her also. He replied that he was not her supervisor. After that he asked Farley to give him a line through the switchboard she operated. Hickey heard him mention Murray’s name on the telephone, and say, “Come over. I am waiting for you.” Murray arrived about 15 or 20 minutes later.³³

Murray gave Farley a closing paycheck and stated in effect that she was being terminated for economic reasons. She replied that she did not believe that that was the case. Murray then asserted, “If economic measures doesn’t hold up, we will go into the efficiency of your work.”³⁴

In his testimony, Lugoff denied that he discharged Hickey for union activity or that he noticed her union button prior to her dismissal. He asserted that toward the end of the week preceding the discharge, Brewer directed him “to cut down one employee” for reasons of economy; and that he selected Hickey because there had been friction between them. According to Lugoff, the

³³Hickey’s account of her conversation with Lugoff is undisputed. Much of it is corroborated by Farley. Lugoff gave no version of the discussion.

³⁴Farley’s account of her conversation with Murray is undisputed. Murray gave no version of the conversation.

friction stemmed from resentment by Hickey on occasions when he criticized her work.

Brewer testified that it was he who dismissed Farley. He denied that he knew that she was interested in the Guild at the time of the selection, and that her union activity was the cause of her discharge. He stated that her dismissal was part of a reduction in force for reasons of economy, and that Farley was selected because she was junior in point of service to the other PBX operators. Brewer also testified that the reduction in staff had been under discussion by management officials for many months; and that either on August 12 or 13 Smith issued a "flat ultimatum" at a meeting of department heads to reduce staff by at least 12 employees during the following week. (Smith testified that he instructed the department heads to reduce staff by "ten to twelve people.")

Putting aside for the time being the question of the motivation for the dismissal of Ross, Hickey and Farley, the Respondent's claim that there was a reduction in force for economic reasons finds support in undisputed testimony by Brewer that the Respondent laid off six other employees during the week in which Ross, Hickey and Farley were dismissed.³⁵ On the other hand, the evidence reflects

³⁵In addition to naming the six, Brewer intimated that "a lot of them in the back shop" (employees in mechanical occupations) were laid off, but he stated that he was unable to give their names and his testimony on the subject is quite vague. It does

a number of infirmities in the Respondent's position that all of the employees discharged during the week in question were dismissed solely as the product of an "economy drive."

The Respondent produced no records to show the state of its financial condition at any time in 1954, and its position with respect to the scope and purpose of the staff reduction rests principally on the testimony of Brewer and Smith. According to Brewer, at the meeting of supervisory personnel, Smith left it to each department head to determine how many should be laid off in his department in order to achieve compliance with the directive that the staff be reduced by a "minimum of twelve." (In passing, it may be noted that Brewer could name only nine who were laid off, and that at a later point in his testimony, the "flat ultimatum" to reduce staff by a "minimum of twelve" became "a matter of cutting down nine to twelve in the personnel.") Brewer also testified that at the meeting the department heads had a discussion "as to which departments were to let so many go." He was then asked in effect what decision was reached on the subject of "how many were to be let go in each department," and he replied, "I cannot answer that. The record speaks for itself * * *"

When not affect the results reached below, but it may be noted that Brewer's allusion to the "back shop" employees is too vague to support a finding that there was a reduction in the number of mechanical employees for economic reasons.

the matter was pressed, he described the decision in this language: "One or more from each department; I will put it this way." At another point, asked whether he knew at the time he left the meeting how many employees, who were under his "direct supervision," he would have to dismiss, he gave no figure, avoiding the question, in my judgment, by saying that all personnel were "indirectly" under his supervision (although he had previously testified that he laid off the individuals over whom he had "direct supervision"). Both in demeanor and in the text of his quoted testimony, Brewer was evasive, leaving a substantial doubt with me that the Respondent's program of reducing staff was what he described it to be. This doubt is compounded by the fact that Brewer's account of the decision to reduce staff does not quite jibe with testimony given by Butler. In contrast to Brewer's description of the alleged directive by Smith to reduce the staff by at least 12 persons, Butler, apparently referring to the same meeting, described the decision reached there as a "general conclusion that we would have to cut the payroll." Asked whether "anything specific" was decided in order to implement the conclusion, Butler testified: "No, I don't recall that there was anything definite. I think Mr. Smith called me later and said, 'Well, we will just have to do something about this.'" This also contrasts with a claim by Brewer that Smith issued a directive at the meeting that each department head reduce his staff by at least one employee. The sense of Butler's testimony is that

it was the telephone call from Smith which crystallized for him the "general conclusion" reached at the meeting, and that it was the call which led to Ross' termination. Brewer's testimony appears to go off in a different direction, for he stated that Butler acted "after he talked to me," testifying, also, "I was the supervisor who made up the list on the instructions of Mr. Smith," thus implying that it was he, Brewer, who decided which employees should be discharged. (At a subsequent point, Brewer stated that he and Butler discussed the names of employees to be laid off, but that Butler "chose the persons.") Significantly, also, although Lugoff is a department head, in referring to directions he received to reduce his staff, he mentioned no instructions by Smith at a meeting. Describing his alleged instructions, Lugoff testified that Brewer told him of an "economy measure" instituted by Smith, and directed him "to cut down one employee." The sum of the matter is that descriptions in the record of the setting for the decision to reduce staff take such different directions that one is unable to reach a definitive conclusion that there was in fact a meeting of department heads at which Smith issued a "flat ultimatum" to reduce the force by a specified number of employees for economic reasons alone, with a direction by Smith to each department head to lay off at least one employee.

Other features of the record contribute substantially to a doubt that the alleged program for staff

reduction was what the Respondent contends it was. Except for an assertion by Smith that "profit and loss figures," which he stated he saw in August, reflected a loss of about \$5,400 for the year, the claim of financial necessity rests on generalizations.³⁶ According to Smith, the Respondent was "losing considerable money" as far back as March, 1954; yet it granted wage increases to almost all the non-supervisory editorial employees to a total of \$6,500 per year on July 17, only about a month before Smith allegedly issued the "flat ultimatum." Moreover, in the light of Smith's testimony that the Respondent was losing a great deal of money early in the year, it seems strange that the Respondent did not undertake its alleged "economy drive" much sooner than the middle of August, but, on the contrary, increased its wage bill materially while it was allegedly suffering financial losses. For reasons already stated, Smith's explanation that the wage increases and the staff reduction did not come earlier in the year because he did not participate actively in the business strikes an implausible note. The sense of Smith's testimony is that both the increases and the reduction were the common product of his policy of securing efficiency

³⁶The General Counsel objected to Smith's testimony concerning the \$5,400 figure, presumably on the ground that the profit and loss statement is the best evidence of its contents. The objection came late, that is, after Smith had already testified to the figure, and I have permitted the testimony to remain.

by weeding out inefficient employees and paying higher wages to those retained. Yet the evidence falls far short of establishing, at least in any credible fashion, that such a policy was actually followed. For one thing, as already found, the purpose of the wage increases was to discourage union activity. For another, the credible evidence will not support a finding that relative efficiency was a factor in determining which employees should be laid off. Putting the cases of Ross, Hickey and Farley aside, there is no evidence at all that the Respondent took efficiency into account in selecting for layoff the other six employees named by Brewer. If Brewer's account of the meeting is credible, each department head was left to his own devices in deciding how many in his department should be laid off, and upon what basis, as long as he dismissed at least one. So loose a directive strikes one as somewhat odd, for it does not appear to take into account some definite method of co-ordinating the personnel needs of the newspaper or of achieving a specific dollar volume of savings. (For all that appears in the testimony of Smith, Brewer and Butler, there was no discussion at the alleged meeting of any specific amount of money to be saved by the reduction in staff.) Moreover, when Ross spoke to Smith, the latter did not tell the employee that he had been selected on the basis of an appraisal of the relative efficiency of employees. Smith put the selection on the basis of seniority in the department (although it may be noted that another editorial employee, Donald Desfor, whose employ-

ment terminated more than two weeks after Ross was dismissed, had less seniority than Ross). Moreover, notwithstanding Lugoff's claim that he selected Hickey because of friction between them, there is undisputed testimony that Lugoff complimented Hickey on her performance in July, and that when he dismissed her about a month later, he expressed regret for his action, stating that her work had been satisfactory as far as he was concerned. In the face of this uncontroverted evidence, as well as other circumstances to be discussed later, I find unpersuasive the claim advanced by Lugoff now that the quality of Hickey's performance was a factor in her selection. Another circumstance which results in a substantial doubt that the program of reducing staff was what the Respondent claims it was is the fact that two editorial employees were hired soon after the reduction in force. One of these, Don (or Carl) Widener, was hired on September 2, 1954, and the other, Earl Griswold, on October 11, 1954.³⁷ (Widener's salary was \$5 less, and that of Griswold \$5 more, than the weekly wage paid Ross.) Moreover, on October 21, 1954, the

³⁷According to Smith, he transferred an editorial employee from North Long Beach to another office because of unsatisfactory performance and hired Griswold for the North Long Beach office because Griswold had had considerable experience in working for a competing paper. Be that as it may, the fact is that the hiring of Widener and Griswold serves to weaken the claim that Smith had issued on directive that at least 12 persons be laid off for economic reasons.

Respondent advertised in its newspaper that it had an opening in its Lakewood office for a classified advertising solicitor (Hickey's occupation), setting forth inducements in pay and working hours, and requesting applicants to telephone Lugoff. As there is no substantial evidence that the Respondent's financial condition was significantly better in October than the Respondent claims it was in August, one is led to wonder why the Respondent should seek to employ a classified advertising solicitor so soon after Hickey's discharge if she was in fact dismissed as an economy measure. Smith advanced no claim that the Respondent's financial position had improved to a point where it warranted the hiring of another solicitor. He did offer an explanation but his testimony in that regard took an illuminating turn. He explained that "a girl quit in the (Lakewood) office and we had to replace her." By any reasonable construction this means that a classified advertising solicitor had quit and that the advertisement sought a replacement.³⁸ Yet the evidence establishes (see G. C. Exh. 6, prepared by the Respondent itself) that Hickey is the only classified advertising solicitor whose employment was terminated after August 1, 1954. I am convinced

³⁸This may be compared with Lugoff's claim that after Hickey's discharge, he combined the Lakewood and Bellflower areas for the purposes of soliciting classified advertising, transferring the Lakewood solicitor to Bellflower, from which she served both sections, adding Hickey's former functions to her Lakewood duties.

that Smith became aware at one point of the untenable position in which his testimony had placed him, for when he was asked to give the name of the employee who had quit, he displayed hostility toward the question, protesting that the "question carried a string to it so that there could be no answer." When the matter was pressed, still refraining from giving the name, he conceded, with reluctant demeanor, "that no classified ad girl quit." At a subsequent point, when asked again for the name, he stated that the first name of the girl who had left was Marion. In that connection, it may be noted that the Respondent's records reflect the employment of two persons bearing the first name Marion, one Marion Mattison, an editorial employee, and the other Marion Cronk, a cashier and PBX operator; and that, according to an exhibit (G. C. Exh. 6) prepared by the Respondent itself, neither employee has left the Respondent's employ. Be that as it may, it is testimony such as Smith gave which militates against acceptance of the Respondent's claim that the dismissal of Ross, Hickey and Farley was but part of a program to reduce staff solely for economic reasons.

I think it unnecessary to dwell on other factors in the record which, in my judgment, run counter to a conclusion that the program for staff reduction was all that the Respondent claims. The fact that some employees, in addition to Ross, Hickey and Farley, were laid off during the week in question might warrant a belief that there was some pro-

gram for a staff reduction based on economic reasons, but upon the basis of the record as a whole, particularly in the light of what has been said above and the circumstances surrounding the dismissal of Ross, Hickey and Farley, I am unable to conclude that the program was in all material respects what the Respondent claims. Moreover, even if it be assumed that the Respondent decided, whether at a meeting of department heads or otherwise, to reduce its staff for reasons of economy, that would not be decisive on the issue of the legality of the discharge of Ross, Hickey and Farley, for the question would still remain whether they were selected for the staff reduction because of their union activities.

Turning specifically to the motivation for the Ross discharge, Butler, as in other phases of his testimony, was evasive on the subject of his knowledge of Ross' membership in the Guild. Questioned whether he had such knowledge prior to the discharge, Butler testified: "Well, at that time there were all sorts of rumors floating around. I don't know, other than I heard it some time, previous to that he (Ross) informed me that he not only was not a member of the union but that he had no use for the union and did not want to work under union conditions." What Butler meant by "all sorts of rumors" about Ross' membership in the Guild does not concretely appear, but it was evident to me that his response was guarded and something less than frank, following the pattern, described earlier,

of avoiding commitment to a fact which might bear adversely on the Respondent's interest. I am also persuaded, in the light of all surrounding circumstances, that Butler's denial that he noticed Ross' button before the discharge lacks plausibility. For articles of its type, the button appears to be substantial in size. It was worn by Ross chest-high and fully exposed on a shirt of contrasting color. Obviously, the button was readily visible to Butler during the 10 or 15 minutes he spent in the Lakewood office before he asked Ross to step into the street. Under these circumstances, I think it implausible that Butler would not notice the button before he discharged Ross, particularly if it be borne in mind that Butler had previously interrogated Ross on the subject of the latter's attitude toward the Guild, an inquiry which was manifestly part of a pattern of sensitivity by the Respondent toward participation by its employees in Guild activities.

The sum of the matter is that the discharge of Ross on the very first day he wore the button at work was no mere coincidence. The dismissal was spurred by the fact that Ross wore the button while at work. The discharge came on a Tuesday, and the earmarks of precipitate and hasty action that day was the busiest of the week for Ross, so busy that he customarily worked late into the night, as did other editorial employees, judging from London's similar custom. Why, it may be asked, did the Respondent select a point in the middle of the work week, when Ross was busiest and had not yet

completed his duties in connection with "make-up" day, to discharge the employee? The evidence yields no satisfactory answer to that question, unless it is that the Respondent wished to rid itself speedily of Ross because he had manifested an interest in the Guild. In so doing, the Respondent would be but carrying out the threat that Lugoff had made to Hickey about a month earlier to the effect that participation by an employee in Guild activities "would mean immediate dismissal." The precipitate nature of the discharge, and its underlying reason, are illuminated by some evidence relating to Clark who, it will be recalled, is one of the Respondent's supervisors, and, at the time of Ross' discharge, had a supervisory status, with the title of manager, in the Lakewood office where Ross was stationed, although not Ross' supervisor. About a week or two after Ross' termination, Clark discussed the dismissal with Maxine Galt, who was then, but is no longer, in the Respondent's employ. Clark told Galt that Ross had worn a union button while at work, and then stated that he had telephoned Smith and told the latter that he "would not work with any union member," and that he would quit if Smith did not discharge Ross. (Galt's account of this conversation is undisputed. Clark was not produced as a witness.) In view of Clark's status, I take his remarks to Galt as an admission, imputable to the Respondent, that he did in fact inform Smith of Ross' manifestation of interest in unionization, and threaten to quit unless Smith discharged Ross. As Ross wore the button for only one day, one may

reasonably conclude that Clark called Smith at some point during the day, and told Smith of Ross' interest in unionization, and that this led to Butler's appearance at the Lakewood office toward the end of the day and to Ross' discharge. Viewing the whole record, I find that the Respondent discharged Ross because the latter manifested an interest in the Guild; and that, therefore, the Respondent violated Sections 8(a) (1) and 8 (a) (3) of the Act.

I also find that the Respondent violated Section 8 (a) (1) of the Act as a result of Clark's statement to Galt that he had telephoned Smith and told the latter that he would not work with a union member and would quit if Smith did not discharge Ross.

Hickey and Farley were, like Ross, discharged soon after they appeared at work wearing Guild buttons. But this is not the only common denominator of all three dismissals. Another is that the respective discharges of Hickey and Farley also have the earmarks of precipitate haste. In that connection, at least in the case of Hickey, the content and quality of testimony by Lugoff is revealing.

As described earlier, Hickey was discharged on Wednesday morning, August 18. According to Lugoff's account, he received his instructions from Brewer to reduce staff by one employee either on the preceding Friday or Saturday, August 13 or 14. Lugoff also testified that Brewer gave him a

“deadline” of one week to effect the cut in staff; that he reached a decision to dismiss Hickey “over the week end,” that is, prior to Monday, August 16; that he was in the Bellflower office, where Hickey was stationed, on Monday; and that he spoke to her on the telephone on a number of occasions on Tuesday. Thus Lugoff’s testimony would make it appear that, having reached a decision to discharge Hickey, he passed over opportunities to do so on Monday and Tuesday, waiting practically two full workdays before he made a move to effect the dismissal at almost 6:00 p.m. on Tuesday; and that it was mere coincidence that the dismissal of both Hickey and Farley followed hard upon the fact that they both wore Guild buttons throughout the day on Tuesday.

Lugoff gave an explanation for the timing of Hickey’s dismissal, but the quality of his testimony in that regard detracts from the force of his explanation. Asserting at one point that she was paid for the full week, although discharged several days before the end of the work week, in order to give her “time to look for another job,” he later summarized his alleged reasons for the timing of the dismissal as follows: “* * * I wanted to give her a break to look for another job but I did not want to hurt the company in the meantime. Monday and Tuesday are very busy days and if she had been let go on Monday, I would have had to put a new girl on that particular job, which would cut the (advertising) lineage and so forth.” I do not rule out,

as improbable, a claim that a firm which had been "losing considerable money" for much of the year and had just embarked on an "economy drive" would pay an employee a full week's wages, upon her dismissal during the middle of the week, in order to facilitate her search for another position. Business practices in that regard would obviously depend upon a number of variables. However, there is reason to question Lugoff's assertion that a motivating factor in the delay in notifying Hickey of her dismissal was concern over placing "a new girl" in Hickey's position on "very busy days." The fact is, as Lugoff conceded at a subsequent point, that Hickey's replacement was not at all "new * * * on that particular job." The "new girl" had previously worked in the Bellflower office before Hickey was hired, performing the very duties to which Hickey succeeded when she was hired. Upon Hickey's employment, her predecessor was transferred to another office; and upon Hickey's discharge, according to Lugoff, the same girl assumed Hickey's functions in addition to her own. This combination of duties in the replacement would make for plausibility in Lugoff's explanation that he deferred discharging Hickey until the "very busy days" had passed were it not for the course his testimony on the subject took. After it developed that the "new girl" was in fact a woman who was then in the Respondent's employ and had been Hickey's predecessor in the Bellflower office, there was some shift in emphasis in Lugoff's explanation, for he testified that his primary reason for defer-

ring the dismissal for two days was because he "wanted to keep Gloria Hickey on and give her a break." It was evident to me, upon observation of Lugoff, that at one point he placed substantial emphasis on his alleged concern over the replacement of Hickey by a "new girl" on two busy days, but when further examination developed that the "replacement was actually an old hand, familiar with Hickey's duties, he attempted to minimize any adverse effect that that development might have upon the plausibility of his explanation by shifting away from his expression of concern over placing a "new girl on that particular job" to primary emphasis upon an explanation that he deferred Hickey's dismissal for two days because he "wanted to keep Gloria Hickey on and give her a break."

But the quality of Lugoff's testimony concerning the timing of Hickey's discharge is not the only reason for rejection of his explanation. In my judgment, it follows the pattern of afterthought justifications exemplified by Smith's untenable explanation of the reason for the advertisement of October 21. In the light of the whole record, a far more plausible explanation for the timing of Hickey's discharge, as well as that of Farley, is to be found in the conclusion that the Respondent moved expeditiously, as in the case of Ross, to discharge Hickey and Farley soon after they showed an interest in the Guild by wearing that organization's buttons. That conclusion is supported by the undisputed evidence of what occurred on the morning

when the women were discharged. On the very occasion when he dismissed Hickey, Lugoff expressed regret for his action and stated that her work had been satisfactory as far as he was concerned. (There is also undisputed evidence that he complimented Hickey for her work during the previous month.) In the face of this evidence, I am unable to accord any weight to the claim Lugoff advances now that he selected Hickey for the reduction in staff because there had been friction between them, nor to another claim he makes to the effect that, although Hickey's production did not enter into his decision "on a big scale," it played something of a role because he "figured" that the friction between them had been "hurting her production." Moreover, after Lugoff's initial explanation to Hickey that she was being discharged as an economy measure, there was practically tacit recognition by him, during later phases of their conversation, that her dismissal was attributable to her interest in the Guild. Thus, after she expressed dissent from the reason he gave her and stated that she was being discharged because she was wearing a Guild button, he replied that he was sorry she "was mixed up in the Guild because * * * they would not be able to do anything" for her. When she protested that she could not be discharged for Guild activities, he recalled that he had been involved in "a situation like that some fifteen years ago" in connection with another newspaper and that "nothing ever came of it."

The circumstances of Farley's discharge add weight to the conclusion that both her dismissal and that of Hickey were no more than the product of a hasty decision to carry out the policy expressed about a month earlier by Lugoff that participation by an employee in Guild activities would result in that individual's "immediate dismissal." Lugoff's call to Murray was no more than a part of the setting in which the former discharged Hickey. Why Lugoff should be "waiting" for Murray is nowhere explained by the Respondent, but the whole setting suggests a hastily formulated purpose to tie into one package the discharge of the two employees who had worn Guild buttons in the Bellflower office on the previous day. Murray's testimony concerning his role in the matter reflects vagueness. It should be borne in mind that he is a supervisor, with the title of sales manager. Yet, according to his account, he acted as no more than a messenger in delivering Farley's check, coming from Compton, some eight miles from Bellflower, to do so. He stated that he was not "clear" as to who asked him to deliver the check, and, in that connection, his testimony took an odd turn at a later point, for when the subject of his recollection of who gave him the check was raised again, he testified: "Presumably the girl that types the checks up. It could have been one of the three girls." He also stated that it was at the request of one of the office girls that he delivered the check. It seems strange that a supervisor should run an errand for an unidentified office girl, but stranger yet that he should do

so in a situation where, as Murray testified, "a regular messenger run" was available for delivery of the check, and that it "could have gone by that method." I believe that Murray was less than frank in his account of his knowledge of the circumstances of Farley's discharge. Significantly, on that score, when Farley expressed disbelief that she was being discharged for economic reasons, he replied, "If economic measures don't hold up, we will go into the efficiency of your work." This of itself indicates that Murray's role was something more than to run an errand for some office clerk, but apart from that, it is evident that Murray was the voice of management, and that when it spoke it evinced a disposition to search for reasons to cloak an unlawful motivation for Farley's dismissal.

After Hickey's discharge, she applied for unemployment compensation to the California Department of Employment. She filled out a required form which includes a space for the listing of the reasons for the termination of the applicant's employment. In the space so provided, she wrote the words, "Economy cut-back" as the reason. Hickey testified that she told the person who interviewed her at the state office that the reason given her by the Respondent was "an economic cutback," but that she "felt fairly certain" that she had been discharged because she had joined the Guild. She also testified that she inserted "Economy cut-back" in the form because she "thought it fair to use" the reason given her by the Respondent.

The Respondent appears to regard the insertion in the form as compelling support for its position. I am unable to agree. It seems to me that it is not unnatural that an employee, in filling out a required form for her unemployment compensation, should list as the reason for termination the one given to her by her employer, even if she disbelieves the reason. In any event, as in other cases of this type,³⁹ one must appraise the motivation for the discharge on the basis of the whole record. So considered, to accord compelling significance to the insertion in the form is to blind oneself to the substantial evidence in this record that the reason given Hickey for her discharge was untrue.

One other feature of the evidence requires mention. Hickey testified that she remained in the Bellflower office about 30 minutes after she was given her paycheck; that after Murray arrived and gave Farley her check, she (Hickey) gave her Guild button to an employee named Fitzgerald; and that the latter wore it in "plain view" while Lugoff was in the office. Murray testified that after he delivered the check he brought, he saw three employees wearing union buttons, but he later stated that he did not see three wearing them at the same time. The evidence relating to Fitzgerald is quite fragmentary. Murray's testimony does not even identify

³⁹See, for example, *Western Lace & Line Co.*, 103 NLRB 1408, 1463, n. 52, enforced August 17, 1954, by the Court of Appeals for the Ninth Circuit (34 LRRM 2755).

Fitzgerald by name as one whom he saw wearing a union button, and Lugoff's evidence contains no reference to her. The record neither describes Fitzgerald's duties nor identifies her immediate supervisor. There is no evidence of her employment history either before or after the discharge of Hickey and Farley.⁴⁰ Put another way, one is unable to determine such relevant matters as the length of time Fitzgerald wore the button, whether she is still employed by the Respondent, whether she was discharged, or, for that matter, whether she left voluntarily at one point or another. Against that background, I am unable to view the fact that Fitzgerald wore a union button during a brief period while Hickey, Farley, Lugoff and Murray were all together in the office as negating an inference that Hickey and Farley were discharged because they wore Guild buttons.

⁴⁰G. C. Exh. 6 lists all editorial employees, cashiers, PBX operators, and classified advertising solicitors on the Respondent's payroll after March 1, 1954. Also listed are all those in such classifications who were terminated after August 1, 1954. Fitzgerald appears in neither list. From the fact that she is not listed under the caption "Classified," in the exhibit it is probable that Lugoff was not her supervisor. In any event, as G. C. Exh. 6 apparently does not set forth all of the Respondent's personnel classifications, in the absence of evidence establishing Fitzgerald's classification, no conclusions can be drawn from the exhibit concerning Fitzgerald's employment history after the discharge of Hickey and Farley.

In the light of the evidence as a whole, I find that Hickey and Farley were discharged because they manifested an interest in the Guild; and that by discharging them, the Respondent violated Sections 8 (a) (1) and 8 (a) (3) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

As it has been found that the Respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

As it has been found that the Respondent has interfered with, restrained, and coerced its employees in the exercise by them of rights guaranteed by Section 7 of the Act, it will be recommended that the Respondent cease and desist therefrom.

As it has been found that the Respondent has discriminated in regard to the tenure of employment of Sol London, Doris Farley, Raymond J.

Ross and Gloria Hickey, it will be recommended that the Respondent offer to them immediate and full reinstatement to their respective former, or substantially equivalent, positions⁴¹ without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them, by payment to each of a sum of money equal to the amount of wages such employee would have earned from the date of said employee's discharge, as found above, to the date of a proper offer of reinstatement to such employee. Loss of pay for each employee shall be computed on the basis of each separate quarter or portion thereof during the period from the date of discharge of such employee to the date of a proper offer of reinstatement. The quarterly periods shall begin with the respective first days of January, April, July and October. Loss of pay shall be determined by deducting from a sum equal to that which the employee normally would have earned in each such quarter or portion thereof, his or her net earnings,⁴² if any, in any other employment during that

⁴¹In accordance with the Board's previous interpretation of the term, the expression "former or substantially equivalent position" means "former position whenever possible and if such position is no longer in existence, then to a substantially equivalent position." See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

⁴²The construction of "net earnings" in *Crossett Lumber Company*, 8 NLRB 440, is applicable here.

period. Earnings in one quarter shall have no effect upon the back pay liability for any other quarter. The Respondent shall be required, upon reasonable request, to make available to the Board and its agents all records pertinent to an analysis of the amount due as back pay and to the offer of reinstatement recommended herein.

Upon the basis of the foregoing findings of fact, and upon the entire record in these proceedings, I make the following:

Conclusions of Law

1. American Newspaper Guild, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing employees, as found above, in the exercise of rights guaranteed them by Section 7 of the Act, the Respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

3. By discriminating in regard to the tenure of employment of Sol London, Doris Farley, Raymond J. Ross, and Gloria Hickey, thereby discouraging membership in a labor organization, the Respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Sections 2 (6) and 2 (7) of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that Herald Publishing Company of Bellflower, of Compton, California, its officers, agents, successors, and assigns, shall:

1. Cease and Desist From:

(a) Discouraging membership by any of its employees in American Newspaper Guild, CIO, or in any other labor organization, by discriminating in any manner in regard to the hire, tenure of employment, or any term or condition of employment of any of its employees;

(b) Engaging or attempting to engage in surveillance of any meeting of American Newspaper Guild, CIO, or any other labor organization, which the Respondent believes or has reason to believe will be attended by any person in its employ; interrogating any employees concerning their membership in, or activities on behalf of, American Newspaper Guild, CIO, or any other labor organization, in a manner constituting interference, restraint or coercion in violation of Section 8 (a) (1) of the Act; stating to employees that it will discharge any employee because of his affiliation with, or activities on behalf of, American Newspaper Guild, CIO, or any other labor organization, or that any employee has been discharged because of such affiliation or activities;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise

of their right to self-organization, to form, join or assist any labor organization, to join or assist American Newspaper Guild, CIO, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which I find will effectuate the policies of the Act:

(a) Offer to Sol London, Doris Farley, Raymond J. Ross, and Gloria Hickey immediate and full reinstatement to their respective former, or substantially equivalent, positions without prejudice to their seniority and other rights and privileges, and make each of the said employees whole in the manner set forth in Section V, above, entitled "The remedy";

(b) Post at its principal place of business in Compton, California, and at each of its other places of business in Los Angeles County, California, copies of the notice attached hereto and marked Appendix A. Copies of such notice, to be furnished by the Regional Director for the Twenty-first Region of the Board, shall, after being duly signed by the Respondent's representative, be posted by the Respondent, immediately upon receipt thereof

and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twenty-first Region of the Board in writing within 20 days of the receipt of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply therewith.

It is further recommended that, unless on or before 20 days from the date of the receipt of this Intermediate Report and Recommended Order the Respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the Board issue an order requiring the Respondent to take the aforesaid action.

Dated this 29th day of March, 1955.

/s/ HERMAN MARX,
Trial Examiner.

Appendix A

Notice to All Employees

Pursuant to

The Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership by any of our employees in American Newspaper Guild, CIO, or any other labor organization, by discriminating in any manner in regard to the hire, tenure of employment, or any term or condition of employment of any of our employees.

We Will offer to Sol London, Doris Farley, Raymond J. Ross, and Gloria Hickey immediate and full reinstatement to their former, or substantially equivalent, positions without prejudice to their seniority or other rights and privileges, and make each of them whole for any loss of pay suffered as a result of our discrimination against such employees.

We Will Not engage, or attempt to engage, in surveillance of any meeting of American Newspaper Guild, CIO, or any other labor organization, which we believe, or have reason to believe, will be attended by any person in our employ; interrogate our employees concerning their membership in, or activities on behalf of, American Newspaper Guild,

CIO, or any other labor organization, in a manner constituting interference, restraint or coercion in violation of Section 8 (a) (1) of the National Labor Relations Act; state to our employees that we will discharge any employee because of his affiliation with, or activities on behalf of, American Newspaper Guild, CIO, or any other labor organization, or that any employee has been discharged because of any such affiliation or activity.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join or assist any labor organization, to join or assist American Newspaper Guild, CIO, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain members of American Newspaper Guild, CIO, or any other labor organization.

HERALD PUBLISHING COMPANY OF
BELLFLOWER,

Employer.

Dated:

By

(Representative)

(Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

United States of America

Before the National Labor Relations Board

Case No. 21-CA-2044

HERALD PUBLISHING COMPANY OF BELL-
FLOWER

and

AMERICAN NEWSPAPER GUILD, CIO.

DECISION AND ORDER

On March 29, 1955, Trial Examiner Herman Marx issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief in support of the exceptions.¹

¹The Respondent filed no specific exceptions to the Trial Examiner's findings that the Respondent unlawfully discharged Raymond J. Ross and granted a wage increase to employees to deter union

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in the case, and adopts the Trial Examiner's findings, conclusions, and recommendations, as modified below.

For the reasons indicated in the Intermediate Report,² we agree with the Trial Examiner that the Respondent's operations affect interstate commerce and that the Board has jurisdiction in the statutory sense in this proceeding. The Trial Examiner was of the further opinion, which we share, that the Respondent's operations fall within the Board's current plan for the assertion of jurisdiction over newspaper enterprises because the Respondent's gross value of its newspaper business amounted to at least \$500,000 per annum and the Respondent

organization, as more fully set forth in the Intermediate Report. Apart from the reasons therefor indicated in the Intermediate Report, which we regard as adequate, we adopt the Trial Examiner's findings, conclusions, and recommendations as to Ross' discharge and the wage increase in view of the absence of exceptions thereto.

²The Trial Examiner correctly reported that the Respondent's annual gross income from the publication of its newspaper exceeds \$500,000 but that the evidence did not disclose the extent of the excess. We find, as stated in the Respondent's brief, that its gross revenue for 1954 amounted to \$1,714,-377.68.

subscribed to an interstate news service and advertised nationally sold automobiles, including Ford, Chevrolet, Studebaker and Packard cars.³ Moreover, we rely on the additional fact that the Respondent advertised many other products which, because they are commonly known to be nationally sold products, we officially notice to be nationally sold products. Among these are household appliances, electric shavers, canned vegetable and meat products, watches, and women's wear, marketed by such well-known manufacturers as Radio Corporation of America, Bendix, General Electric, Sunbeam, Ronson, Schick, Westinghouse, Elgin, Chrysler, Libby, Gerber and Playtex. In view of the foregoing, we find that the Board has jurisdiction and that it will effectuate the policies of the Act to assert jurisdiction in this proceeding.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Herald Publishing Company of Bellflower, Compton, California, its officers, agents, successors, and assigns, shall:

1. Cease and Desist From:

(a) Discouraging membership by any of its employees in American Newspaper Guild, CIO, or in

³The Daily Press, Inc., 110 NLRB 573.

any other labor organization, by discriminating in any manner in regard to the hire, tenure of employment, or any term or condition of employment of any of its employees;

(b) Engaging or attempting to engage in surveillance of any meeting of American Newspaper Guild, CIO, or any other labor organization, which the Respondent believes or has reason to believe will be attended by any person in its employ; interrogating any employees concerning their membership in, or activities on behalf of, American Newspaper Guild, CIO, or any other labor organization, in a manner constituting interference, restraint or coercion in violation of Section 8 (a) (1) of the Act; stating to employees that it will discharge any employee because of his affiliation with, or activities on behalf of, American Newspaper Guild, CIO, or any other labor organization, or that any employee has been discharged because of such affiliation or activities;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join or assist any labor organization, to join or assist American Newspaper Guild, CIO, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring mem-

bership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Sol London, Doris Farley, Raymond J. Ross and Gloria Hickey immediate and full reinstatement to their respective former, or substantially equivalent, positions without prejudice to their seniority and other rights and privileges, and make each of the said employees whole in the manner set forth in Section V of the Intermediate Report, entitled "The Remedy";

(b) Post, at its principal place of business in Compton, California, and at each of its other places of business in Los Angeles County, California, copies of the notice attached to the Intermediate Report and marked Appendix A.⁴ Copies of such notice, to be furnished by the Regional Director for the Twenty-first Region of the Board, shall, after being duly signed by the Respondent's rep-

⁴This notice is hereby amended by substituting the words "A Decision and Order" for the words "The Recommendations of a Trial Examiner." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

representative, be posted by the Respondent, immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twenty-first Region of the Board in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C., Sept. 16, 1955.

[Seal]

NATIONAL LABOR RELATIONS BOARD,

PHILIP RAY RODGERS,
Acting Chairman;

ABE MURDOCK,

IVAR H. PETERSON,

BOYD LEEDOM,

Members.

Before the National Labor Relations Board

[Title of Cause.]

RESPONDENT HERALD PUBLISHING CO.
OF BELLFLOWER'S EXCEPTIONS TO
INTERMEDIATE REPORT

In accordance with section 102.46 of the Rules and Regulations of the National Labor Relations Board, Respondent hereby excepts to those portions of the Intermediate Report of the Trial Examiner, Herman Marx, filed herein and dated April . . ., 1955, as specified below:

I.

To the observation that "There is testimony in the record that advertisements placed by the dealers are financed from funds 'allotted' to them." (I.R. p. 3, lines 58-59.)

II.

To the observation that "and that Respondent subscribes to the newsletters in order to retain some right (not otherwise elaborated in the record)." (I.R. p. 4, lines 10-11.)

III.

To the finding that "the 'Garden and Home Magazine' Supplement to the issue of September 12, 1954, contains a substantial number of items dealing with events that occurred, or places that are located, outside the State of California." (I.R. p. 4, lines 13-16.) (Emphasis added.)

IV.

To the conclusion that cartoons “were used frequently.” (I.R. p. 6, line 52.) (Emphasis added.)

V.

To the conclusion of law (re the effect of the Daily Press case). (I.R. p. 9, lines 5-16.)

VI.

To the conclusion, “that a substantial, even though unspecified, portion of the newspaper’s advertising volume and revenue is derived from advertisements of nationally sold products.” (I.R. p. 10, lines 18-22.)

VII.

To the conclusion that, “such a subscription (U.P. newsletter) is clearly analogous to ‘membership in interstate news services.’ ” (I.R. p. 12, lines 2-3.)

VIII.

To the conclusion that, “It is thus evident * * * the Respondent’s operation met a standard prescribed by the Board for assertion of jurisdiction.” (I.R. p. 12, lines 10-13.)

IX.

To the conclusion that, “I find that the Respondent’s operation affects interstate commerce; that the Board has jurisdiction of this proceeding; and that the assertion of jurisdiction will effectuate the policies of the Act.” (I.R. p. 12, lines 17-20.)

X.

To the conclusion, to the effect that Murray did not accord a literal meaning to the remark of Sheets. (I.R. p. 16, line 60.)

XI.

To the finding that Murray's visit to Sheets' home was an act of surveillance within the meaning of the Act. (I.R. p. 17, lines 31-33.)

XII.

To the conclusion that Butler and Smith were not forthright witnesses. (I.R. p. 23, line 34.)

XIII.

To the finding that, "London's account of the conversation at Smith's home is essentially undisputed." (I.R. p. 27, lines 52-53.)

XIV.

To the conclusion that Respondent violated the Act by discharging London, and that Butler's statement to Fleener violated the Act. (I.R. p. 29, lines 19-22.)

XV.

To the conclusion that, "the evidence does not establish that London neglected his duties for organizational work." (I.R. p. 28, lines 38-40.)

XVI.

To the conclusion that Butler's interrogation of Ross violated the provisions of the Act. (I.R. p. 30, lines 10-11.)

XVII.

To the conclusion that the reason given Hickey for her discharge was untrue. (I.R. p. 39, lines 56-57.)

XVIII.

To the conclusions that Hickey and Farley were discharged for Union activities. (I.R. p. 40, lines 24-27.)

XIX.

To the conclusion that the activities of Respondent have a substantial effect upon commerce, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. (I.R. p. 40, lines 31-36.)

XX.

To the conclusions of law. (I.R. p. 41, numbers 2, 3 and 4.)

XXI.

To the Trial Examiner's recommendations. (I.R. p. 42, lines 1-57.) (I.R. p. 43, lines 1-5.)

All the foregoing Exceptions to the specified portions of the Intermediate Report of the Trial Examiner hereinbefore designated, are done on the general grounds that:

(1) The Findings of Fact are not supported by the evidence, and

(2) The Conclusions, holdings and recommendations excepted to, are contrary to law.

Dated: This 30th day of April, 1955.

HERALD PUBLISHING COM-
PANY OF BELLFLOWER,

By SIDNEY W. KAUFMAN,
Its Attorney.

Received May 3, 1955.

Before the National Labor Relations Board

[Title of Cause.]

PETITION OF RESPONDENT HERALD PUB-
LISHING COMPANY OF BELLFLOWER
FOR REHEARING

You and each of you please take note that the petitioner, Herald Publishing Company of Bellflower takes exception to the decision of the Board in the above-entitled matter and requests a rehearing by the Board. It is respectfully submitted that the Board committed error in asserting jurisdiction in the action.

It is submitted that the jurisdictional standards of the Daily Press case, 110 NLRB 573, were not intended to apply to this situation. The mere fact that a newspaper has a gross revenue in excess of \$500,000.00 should not mean that the Board should automatically assert jurisdiction. For example, sup-

pose that a newspaper with a gross revenue of more than \$500,000.00 places one advertisement of a Ford automobile, in one issue during the calendar year, for which it receives the sum of \$50.00. It does not subscribe to a wire service, purchase materials from out-of-state, or have any other so-called "national advertising," except for this one \$50.00 advertisement. It does not appear that the Daily Press decision intended that the Board should assert jurisdiction in this type of a fact situation, but rather the jurisdictional tests of that case were intended to impose additional jurisdictional limitations upon the Board. In other words the Board would assert jurisdiction only where the newspaper had a gross revenue of more than \$500,000.00 and the activities of the paper had a substantial effect upon interstate commerce. As was previously pointed out in Respondent's brief submitted to the Board, the dissent in the Daily Press case stated that the majority opinion imposed a further limitation upon the exercise of the Board's jurisdiction in newspaper cases.

It is Respondent's contention that the decision in the Daily Press case overruled prior decisions only to the extent that jurisdiction was asserted where the gross revenue was less than \$500,000.00 annually. It did not overrule the prior decisions to the extent that the Board would assert jurisdiction in cases where newspaper companies held membership in or subscribed to interstate wire services, or

published advertisements of nationally sold products, where there was an insubstantial amount of activity along these lines. The mere fact that a newspaper has gross revenue in excess of \$500,000.00 does not mean that it will have an impact upon interstate commerce. Nearly every newspaper, even the so-called throwaways, advertise some nationally sold product.

Without belaboring the points covered in Respondent's prior brief, the activities of Respondent relative to its interstate commerce should be noted:

Respondent did not purchase any of its materials from outside of the State of California; none of the advertisements of so-called national products were obtained from advertising agencies located outside of the State of California; none of the Respondent's newspapers were sold outside of the State of California; less than 1.3% of the total revenue received by Respondent was from the advertisement of automobiles; the use made of the other so-called nationally advertised products was inconsequential; Respondent made little or no use of the U.P. newsletters, which it received incidentally, from Sacramento, but only received such letter once weekly, and only subscribed to it in order to preserve its right to receive the regular U.P. wire service at a future date if it so desired. It is therefore respectfully submitted that the Respondent's activities fall within the de minimus rule and jurisdiction was erroneously asserted. Respondent therefore prays

that the Board reconsider its prior decision and decline jurisdiction in the instant case.

HERALD PUBLISHING COM-
PANY OF BELLFLOWER,

By PETER M. WINKELMAN,
Its Attorney.

Filed and served October 5, 1955.

Before the National Labor Relations Board
Twenty-first Region
Case No. 21-CA-2044

In the Matter of:

HERALD PUBLISHING COMPANY OF BELL-
FLOWER,

and

AMERICAN NEWSPAPER GUILD, CIO.

PROCEEDINGS

Monday, December 6, 1954

Pursuant to notice, the above-entitled matter came on for hearing at 10:10 o'clock a.m.

Before: Herman Marx, Trial Examiner.

Appearances:

BEN GRODSKY,

Appearing as General Counsel on Behalf
of the National Labor Relations Board.

KAUFMAN & LELAND, by
SIDNEY W. KAUFMAN,

Appearing on Behalf of the Company.

WIRIN, RISSMAN & OKRAND, by
ROBERT R. RISSMAN,

Appearing on Behalf of the Union. [1*]

JOSEPH L. CAMPO,

Appearing on Behalf of the Union. [2]

* * *

(The documents heretofore marked General Counsel's Exhibits Nos. 1-A to 1-J, inclusive, for identification were received in evidence, and General Counsel's Exhibit No. 1-K was marked and was received in evidence.) [9]

* * *

Mr. Kaufman: Yes, it is a motion to dismiss on the ground that the alleged employer's operations do not affect commerce within the meaning of the Act.

Trial Examiner: On the pleadings as they stand now? I understand you want to make a motion on the pleadings as they stand now?

Mr. Kaufman: Yes and of course, I will renew my motion at the conclusion of the evidence on this, but I do want to make the motion any way.

Trial Examiner: You are entitled to address yourself to the pleadings. Go ahead, sir.

Mr. Kaufman: Yes, if it pleases the Court, I move to dismiss the petition on the grounds that the

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

alleged employer's operations do not affect commerce within the meaning of the Act, and that it would not effectuate the policies of the Act for the Board to assert jurisdiction herein.

Trial Examiner: I do not have to hear the other side on this because I note that there is an amendment to the complaint [11] and I am governed only by the state of the pleadings here and not by any evidence. The motion is directed to the complaint as amended.

There is an amendment to the complaint which, as I say, is couched in the terms of the jurisdictional standards which have been promulgated by the Board. I will deny the motion.

Let us go off the record now, Mr. Grodsky, and you can discuss the question of stipulations.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Grodsky: Mr. Examiner, at this time I wish to propose a stipulation as a result of my discussions with counsel, first with reference to the nature of the respondent's business and specifically going to the matter generally described in paragraph 1 (a) of the respondent's amended answer to the complaint.

I propose a stipulation that the respondent, Herald Publishing Company of Bellflower, doesn't receive any wire service from United Press but does receive two weekly news letters. One news letter is described as the "red letter service" and

consists of news from various parts of the country and comes by first-class mail.

The other weekly letter is described as the "Sacramento special service" and is received by third-class mail. [12]

Trial Examiner: And deals with what?

Mr. Grodsky: It deals primarily with news from the state capital of California.

Trial Examiner: Well, what does it deal with secondly?

Mr. Grodsky: I don't know.

Mr. Kaufman: You have covered it because you mentioned the red letter. Just say it deals with local matters.

Mr. Grodsky: All right, local matters.

Trial Examiner: I take it the Sacramento special service deals with Sacramento matters?

Mr. Kaufman: Yes. [13]

* * *

Mr. Grodsky: There is a pending stipulation and I am proposing it the way it stands, merely that you received it.

Mr. Kaufman: So stipulated with the understanding it [14] doesn't mean "use" as well as "receive."

Mr. Grodsky: Now, as to "use," we will stipulate first that you do use the Sacramento release.

Mr. Smith: No, definitely not.

Mr. Kaufman: Hold it.

Trial Examiner: May I suggest that Mr. Smith sit beside counsel in the interests of keeping regularity in the record.

Mr. Kaufman: I can only say, counsel, that I cannot enter into a stipulation pertaining to "use."

Mr. Grodsky: Right.

Mr. Kaufman: Right?

Mr. Grodsky: All right.

Trial Examiner: You are referring to the Sacramento letter?

Mr. Kaufman: For either letter.

Mr. Grodsky: For either letter.

Trial Examiner: And I understand that you have pointed out that "receive" doesn't include "use" here?

Mr. Kaufman: That is correct, sir.

Mr. Grodsky: All right. Well, I will propose a stipulation now, addressing myself to paragraph 1 (b) of the amended answer, the stipulation being as follows;

That the respondent has indefinite agreements with the Chicago Sun Times Syndicate of Chicago, Illinois, the Harry Cook Syndicate of New York City, New York, and the McNaught [15] Syndicate of New York City, New York, for the use of two-column panel cartoons, which are furnished by each of the syndicates and does use the cartoons.

Mr. Kaufman: No, I cannot—may I consult with my client off the record, please?

Trial Examiner: Yes, sure.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Kaufman: The stipulation as offered cannot be entered into by counsel. [16]

* * *

SUMNER HARTWELL

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * *

By Mr. Grodsky

Q. Will you state your name and address, Mr. Hartwell?

A. Sumner Hartwell, 12129 Gertrude Drive, Lynwood.

Q. By whom are you employed?

A. By the Herald Publishing Company.

Q. In what capacity?

A. National advertising manager.

Q. What are your duties in that connection?

A. Well, they are primarily—it is part of the duties that I do that I handle several local food accounts and schedule the national advertising.

Q. Now, what is national advertising as you people in the Herald Publishing Company use that phrase?

Mr. Kaufman: Well, I am going to object to that. It is calling for the conclusion of the witness and isn't a proper question.

Trial Examiner: I will overrule the objection.

The Witness: Well, it is that advertising that

(Testimony of Sumner Hartwell.)

our sales force is able to secure from local dealers, local food [19] accounts, local stores that have funds they have secured from their purchases of merchandise.

Trial Examiner: Why do you call that "national advertising"?

The Witness: I don't know but the term has always been used in the twenty-seven years that I have been in the newspaper business.

Q. (By Mr. Grodsky): How long have you been with the Herald Publishing Company?

A. Thirteen years on the 21st of last September.

Q. Have you always had this same position of national advertising manager? A. No.

Q. When did you get that position?

A. Approximately five years ago.

Q. Was there someone else who occupied that position? I mean, before you?

A. Well, not actually, Mr. Brewer handled the national advertising at the time.

Q. What was his position at that time?

A. General manager of the newspaper.

Q. When you say "the newspaper," you mean the entire chain? A. That is right.

Q. And he still has that same job?

A. No, he is now vice president of the Herald Publishing [20] Company.

Q. Who is the general manager of the Herald Publishing Company at this time?

A. Colonel C. S. Smith.

(Testimony of Sumner Hartwell.)

Trial Examiner: What chain is that? I am not aware of any chain yet.

The Witness: We have nine separate community newspapers that are published—do you want to know the names of those that are published in—

Trial Examiner: No. By “we” you mean the newspapers?

The Witness: Yes.

Q. (By Mr. Grodsky): All being in the southern part of the Los Angeles county?

A. That is right.

Q. And they are all published at one single printing plant, which is located in Compton?

A. We have two printing plants there, one on Magnolia and one on Palm.

Q. Both printing plants are in Compton?

A. Yes.

Q. That is where the headquarters of the chain is?

A. That is right.

Q. Do you know why you were designated “national advertising manager” at the time you were?

Mr. Kaufman: I am going to object to the question as [21] not proper examination of a witness. Whether or not he knows why, I think, is irrelevant and immaterial and not within the issues of this case.

Trial Examiner: What is the relevance, counsel?

Mr. Grodsky: I could see how it could be relevant, Mr. Examiner, if the pressure of business

(Testimony of Sumner Hartwell.)

and the increasing volume of advertising made it incumbent to establish a new position.

Trial Examiner: Well, of course, the terms of the definition of "national advertising" might be quite unimportant. I think it is probably preliminary and I will permit the question, if he knows.

The Witness: I haven't the slightest idea.

Trial Examiner: All right.

Q. (By Mr. Grodsky): What kind of advertising and by what kind of advertising, I mean what type of advertisements are the kind which are classified in your organization as "national advertising"?

A. Well, we have some——

Mr. Kaufman: Now, just a minute, just a minute. That is assuming a fact not in evidence. In the first place, we do not classify anything as "national advertising" within the meaning of the Act. The question itself means nothing standing alone.

First, there is no showing that this witness has any [22] authority to do any classifying and secondly, there is the question, as I see it, and it throws no light on our problem at all.

Trial Examiner: Well, I will assure counsel of one thing. I am not going to decide this case on the basis alone of semantic niceties. The Board has used a term, "national advertising" here. I think I know what they had in mind. You folks may think you know what the Board had in mind and we may all differ.

I am going to take this witness' testimony as to his knowledge, that the company with which he

(Testimony of Sumner Hartwell.)

has been identified for a very substantial time has such a thing as "national advertising" and at least identifies certain information as "national advertising."

I construe Mr. Grodsky's question, when he spoke of "classifying" as identifying. If I am in error, Mr. Grodsky can correct me.

Mr. Grodsky: That is right.

Trial Examiner: If there is any doubt in your mind, you can ask me please. I will overrule the objection.

The Witness: May I please have the question read to me?

(Question read.)

Mr. Grodsky: I will change the word "classified" to "identified." [23]

Trial Examiner: All right.

The Witness: For the most part, it is that advertising that our salesmen are able to dig up among local accounts that have quotas of advertising funds from merchandise that they have purchased, and to try to persuade the local merchant to spend his money in our newspaper rather than in bill-boards, direct mail service or other medium of advertising.

Trial Examiner: Can you, of your own knowledge, identify any names of any products that have been covered by such advertising?

The Witness: Oh, yes, this brassiere advertising that you saw.

Trial Examiner: I did not see it.

(Testimony of Sumner Hartwell.)

Mr. Grodsky: The Examiner did not see anything.

The Witness: I beg your pardon. The brassiere advertising that you have seen, of which we have another, I would guess, about twenty-five or thirty accounts in our various newspapers. They are allotted an advertising quota.

Luizanne coffee, of which Colonel Smith buys a great quantity, has influenced them to spend money out of their quota of advertising allowances.

Trial Examiner: Influenced whom, sir?

The Witness: The roster, I believe.

Trial Examiner: Who is that? [24]

The Witness: That is the producer.

Trial Examiner: What is the name again, I did not get it?

The Witness: Luizanne coffee.

Trial Examiner: Do you know where they are located?

The Witness: On Olympic, east of Soto.

Trial Examiner: In Los Angeles?

The Witness: Yes.

Trial Examiner: Can you continue with some other names, please?

The Witness: Practically all the automobile dealers have sums of money that are allotted on the sales of their goods.

Trial Examiner: Would you know the names of any of the cars?

The Witness: Ford, Chevrolet, Studebaker, Packard.

(Testimony of Sumner Hartwell.)

Trial Examiner: Can you think of the names of any other products offhand?

The Witness: Burgermeister beer, Cinch cake-mix.

Trial Examiner: Which?

The Witness: Cinch cake-mix.

Trial Examiner: Is that the name of the manufacturer of the product, Cinch?

The Witness: Yes, I think it is.

Trial Examiner: Do you know where they are located?

The Witness: Frankly I don't. [25]

Trial Examiner: Well, perhaps it is a subject that you are getting around to. For the moment, I now have a notion of what he has in mind.

Mr. Grodsky: Yes.

Q. (By Mr. Grodsky): I will show you——

Mr. Kaufman: May I see it first, counsel?

Mr. Grodsky: Yes.

Mr. Kaufman: You are using this for example only?

Mr. Grodsky: Yes.

Q. (By Mr. Grodsky): I will show you for example only, what purports to be a complete issue of the Paramount Hollydale edition of the Herald American, dated through September, 1954, and ask you if you will, sir, inspect this and say whether that is, to the best of your knowledge, what I represented to you that it is?

Trial Examiner: Did you identify it as General Counsel's Exhibit No. 2?

(Testimony of Sumner Hartwell.)

Mr. Grodsky: I am only going to use this for illustrative purposes. I don't think I will give it an identifying number.

Trial Examiner: Well, we ought to have a handle so to speak, whether you introduce it later is a different question.

Let us call it General Counsel's Exhibit No. 2 for identification.

Mr. Grodsky: All right. [26]

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 2 for identification.)

Trial Examiner: Go ahead.

The Witness: So far as I know, that is the edition of the Herald American through September 16, 1954.

Q. (By Mr. Grodsky): Now, in looking through it, Mr. Hartwell, I would like you to go through it and to call our attention to what has previously been identified as "national advertising."

What about this one (indicating)?

A. No.

Trial Examiner: I think we ought to keep the record clear here. Let us not have private colloquy unless the witness specifically refers to something in General Counsel's Exhibit No. 2 for identification, and then we will know what he is talking about.

Suppose you continue to look through it carefully and take your time and Mr. Grodsky can ask the

(Testimony of Sumner Hartwell.)

questions after you have done so. Look through it carefully and take your time.

The Witness: All right. There is a national advertisement (indicating).

Trial Examiner: The witness identifies an advertisement which we will call "Lucky Lager," for the purposes of identification in General Counsel's Exhibit No. 2. [27]

It is simply in General Counsel's Exhibit No. 2 and whoever has to identify it later, will look for it.

Q. (By Mr. Grodsky): May I ask the witness, approximately how large is that advertisement?

A. That is 1,000 lines, sir.

Trial Examiner: Pardon me, is it accurate to say that 1,000 lines would be approximately about three-fifths of a page?

The Witness: Well, it is exactly six columns by seventeen inches, that is one hundred and two inches, and there is one hundred and sixty-eight inches on the page, that is about three-fifths.

Trial Examiner: All right, sir.

The Witness: There is a Luzianne coffee advertisement (indicating).

Trial Examiner: The witness identifies a name "Luzianne coffee" located in General Counsel's Exhibit No. 2.

Mr. Kaufman: Do you want to get the size of that, too, while we are at it?

The Witness: That is three column, eleven inches, thirty-three inches.

(Testimony of Sumner Hartwell.)

Trial Examiner: Would you say maybe one-sixth of a page or thereabouts?

The Witness: Yes, it is a little less.

Trial Examiner: I do not think we need be very precise [28] about it, just give us your best estimate on these.

The Witness: Norway sardines, two column, four inches, eight inches.

Trial Examiner: That is an advertisement, as I see it, that is probably about four inches by four inches.

The Witness: Two column by four inches equals eight inches, one-seventeenth of a page.

Trial Examiner: All right, sir.

The Witness: To the best of my knowledge, that is all the national advertising in there.

Mr. Kaufman: Now let us, for the purposes of the record, and I apologize if I am speaking out of turn, but to button this up all under one button as the saying goes, let us indicate that the witness has examined this General Counsel's Exhibit No. 2 for identification which consists of—can you tell us how many pages there are, if you will?

The Witness: I will have to count them—forty pages.

Trial Examiner: The witness has testified that there are forty pages, gentlemen, is there any question that the pages are what might be referred to criteria as “standard newspaper pages”?

How many would those be in terms of columns?

(Testimony of Sumner Hartwell.)

The Witness: There are three hundred and twenty columns.

Trial Examiner: But what I mean is, is there such a thing as a "standard size newspaper page"? [29]

The Witness: Yes and it consists of eight columns.

Trial Examiner: All right.

Q. (By Mr. Grodsky): I am calling your attention, with the possibility that you may have overlooked it, to two of these advertisements.

A. Yes.

Q. One advertisement which purports to be an advertisement for R.C.A. Victor, that is, the entire advertisement is devoted to R.C.A. Victor and I ask you whether this advertisement, if you know is—

A. It isn't.

Trial Examiner: It isn't what you have referred to as "national advertising"?

The Witness: That is right.

Trial Examiner: I see.

Q. (By Mr. Grodsky): I will call your attention to this advertisement which entirely is devoted to introducing "Playtex" Living Brassiere and it takes up seven-eighths of a page approximately, and I ask you whether that advertisement is national advertising?

A. It isn't.

Q. How are you so sure about that?

Trial Examiner: Well, now, Mr. Grodsky, he has answered the question.

Mr. Grodsky: I know that. [30]

(Testimony of Sumner Hartwell.)

Trial Examiner: All right, go ahead.

Q. (By Mr. Grodsky): How are you sure about it?

A. It was placed by Lee's Department Store and charged to their account.

Q. Now, are these advertisements that you have identified as "national advertising," were they placed by any one other than the local merchant?

A. Only through the influence of the local merchants.

Q. You apparently did not hear my question. My question is were they placed by any one other than the local merchant? A. Yes.

Mr. Kaufman: What do you mean by "these advertisements"? The question for a record later is, I believe, a little puzzling.

Trial Examiner: Well, there is some continuity. I think counsel was referring to the Lee's advertisement and if I am not correct, I may be corrected. Is that so, Mr. Grodsky?

Mr. Grodsky: Yes, when I said "these advertisements" I meant that these advertisements are placed by someone other than the local merchants. I also referred to the advertisements that the witness had testified to as being under national advertising.

That is what you understood, isn't it?

The Witness: Yes. [31]

Trial Examiner: Oh, I see, well I was in error. You had better identify the advertisements when you refer to them, Mr. Grodsky.

Mr. Grodsky: Yes.

(Testimony of Sumner Hartwell.)

Q. (By Mr. Grodsky): You testified about a "Lucky Lager" advertisement; by whom was that advertisement placed?

A. If I am not mistaken, McCann & Errickson.

Trial Examiner: Do you know in general what type of business they have?

The Witness: They are an advertising agency.

Q. (By Mr. Grodsky): Now you testified that some of this national advertising is automobile advertising? A. That is right.

Q. By whom is that advertising generally placed if there is any general rule about it? Is it placed by the local merchants?

A. The local merchant has the influence, yes.

Q. That doesn't answer my question. Does he give you the order or does he sign the contract with you?

A. Well, we pick up mats and the order from him, yes.

Q. And how do you know that it is national advertising?

A. Well, by virtue of the statement that I gave you of what we call "national advertising." We have salesmen who call on all the automobile dealers and persuade them to spend as much of their profit as they can in the local newspapers. [32]

Q. I understand that, sir. Now, coming back to this Lee's Department Store advertisement which involved the "Playtex" advertisement. You testified that you knew that that was local because you received the order for it from the official Lee's

(Testimony of Sumner Hartwell.)

Department Store? A. That is right.

Q. Now, wouldn't that be true, say, on a Ford or a Chevrolet advertisement, that you would receive the order locally?

A. Well, not necessarily. We have salesmen who might handle certain department stores, certain sections of the city and certain types of accounts, and the salesmen who handled that knew that Lee's had an allotted amount of money to spend, to solicit them, and from which we got the sale. We have perhaps twenty or twenty-two accounts.

Q. I am a little confused now. Will you—are you telling us now that your salesman knew Lee's had some money to spend from the "Playtex" people? A. Yes.

Q. For that advertising? A. That is right.

Q. And then that would be national advertising?

A. No, not at all.

Trial Examiner: Well, I am quite unclear as to the distinction.

Mr. Kaufman: He asked him for a description and he is [33] doing the best he can.

Trial Examiner: We are not suggesting that the witness isn't but obviously there appears to be some doubt here and we will try to clarify it.

Q. (By Trial Examiner): If I understood you correctly, you defined as "national advertising" before, advertising of a product which is sold by a local merchant, but for the advertisement of which he has some funds? A. That is right.

Q. From the manufacturer of the product?

(Testimony of Sumner Hartwell.)

A. That is right.

Q. And do I understand you that that was the situation with the Lee's advertisement?

A. That is an assumption on my part that the salesman knew about it. I do know that there are various wholesalers or even distributors who will come in and tell us, "Why don't you jack this account up? They have some funds to spend," and if we know of any orders, we go around and pick them up, most assuredly.

Q. Now, let me ask you this. Referring to that advertisement, I notice that there is a picture of a woman with a bra, that is, it is apparently a sketch.

A. Yes.

Q. Now, is that made up in your establishment?

A. No, it isn't. [34]

Q. Can you tell by looking at it and from your knowledge and experience of your business, can you tell where that came from?

A. I would say "yes." The man that writes the Lee's advertising had in his file probably many mats of this sort in various sizes and put it together for their advertisement in our paper.

Q. Well, do you know whether this mat was prepared, and I ask whether you know, by Lee or by the manufacturer?

A. I don't know actually.

Trial Examiner: Well, Mr. Grodsky, as I see it right at this point—I said before that there is more in these cases than semantic niceties. There is a

(Testimony of Sumner Hartwell.)

Statute and an Act involved and a law of Commerce and that is what we are interested in.

Now, the witness has described for us what he considers is "national advertising." I detect a trend as to first-hand knowledge on the advertising involved and I think he doesn't know whether the Lee's advertising conforms to his definition of "national advertising."

Mr. Grodsky: The only reason I explored it, as the record will indicate, a previous answer of his threw me off.

Trial Examiner: I would suggest that that be General Counsel's Exhibit No. 3 for identification.

Mr. Kaufman: Yes, if I may be so bold, I would suggest [35] that it should be called General Counsel's Exhibit No. 3.

Trial Examiner: That will be read into the record and it will become General Counsel's Exhibit No. 3 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 3 for identification.)

Trial Examiner: Go ahead, sir.

Q. (By Mr. Grodsky): I will now show you General Counsel's Exhibit No. 3 marked for identification, which purports to be a copy of Herald American Garden and Home Magazine, of the issue dated Sunday, September 12, 1954, and ask you whether my description of General Counsel's Exhibit No. 3 is what it purports to be?

(Testimony of Sumner Hartwell.)

A. I would say that it is, yes.

* * *

Q. (By Mr. Grodsky): Mr. Hartwell, I will show you General Counsel's Exhibit No. 3 for identification and on the second of last page is a full page advertisement, and by the way, this is an advertisement for "Playtex Magic-Controller." [36]

Am I correct? A. Yes.

Q. Now, do you know whether or not this advertisement is national advertising?

A. I do.

Mr. Kaufman: Well, now, just a moment.

Trial Examiner: Have you a motion?

Mr. Kaufman: I move that the answer be stricken for the limited purpose of permitting me to object to the question.

Trial Examiner: I will treat it as a motion. Why don't you treat it with the merits of a motion?

Mr. Kaufman: The question is ambiguous. If the reporter will read it back, I will answer more fully.

(Question read.)

Mr. Kaufman: "Do you know whether or not this advertisement is national advertising," within your definition, sir. What I am getting at is I want the witness to restrict his answer to his definition rather than perhaps counsel's or my own or somebody else's.

Mr. Grodsky: I will stipulate——

Trial Examiner: Excuse me a minute. I don't

(Testimony of Sumner Hartwell.)

really get the point of this. You will have an opportunity to clarify any point in the witness' testimony that you think might need clarification through cross-examination and other evidence. [37]

I am assuming that thus we will save testimony that speaks for itself as to what national advertising is. I will not undertake to define it at this point. I will deny the motion.

Q. (By Mr. Grodsky): Is this national advertising? A. No, it isn't.

Q. From your knowledge of layout and so forth, could you express an opinion as to whether this advertisement was prepared by the same agency, that is, the same person or group of persons who prepared the advertisement which we were discussing in General Counsel's Exhibit No. 2, the Lee's advertisement?

A. From looking at it, I would say "yes."

Trial Examiner: And what agency is that?

The Witness: I have no idea. We dealt strictly with Mobert's.

Q. (By Mr. Grodsky): And Mobert's is the firm which advertised in General Counsel's Exhibit No. 3; is that correct? A. Yes.

Trial Examiner: That, I take it, is a retailer?

The Witness: That is right.

Trial Examiner: Mr. Grodsky, we better have General Counsel's Exhibits Nos. 2 and 3 just together. I don't know yet whether any party may wish to offer them here. I may do so [38] myself as a Trial Examiner's Exhibit.

(Testimony of Sumner Hartwell.)

Mr. Grodsky: Well, I will just have to warn you that you will have no duplicates because I don't have duplicates of these.

Trial Examiner: The company has so it is all right. It might be very easy for you to purchase a duplicate from the company. Go ahead.

Q. (By Mr. Grodsky): Mr. Hartwell, you testified that Burgermeister beer was an additional account of national advertising; do you recall that that is correct? A. Yes, I did.

Q. And through what agency is that placed with you?

A. I am not absolutely sure. It is a San Francisco agency.

Q. How do you get these accounts from San Francisco agencies? What method of operation do you use to get the accounts?

A. Do you want the inception of how we go about putting a Burgermeister advertisement into our paper?

Q. Yes.

A. Well, Colonel Smith with seven stores and with a liquor outlet in each store, purchases a great amount of beer and he brings pressure to bear on the managers of his various stores, and buyers, and brings pressure to bear on the salesmen, and the salesmen in turn, brings pressure on his company to allot some of the money for advertising in our newspapers. [39]

Q. And that money allotted say by the Burger-

(Testimony of Sumner Hartwell.)

meister Brewing Company, and they, through their own agency, place the advertisement?

A. That is right.

Q. You do not recall the name of the agency?

A. No, but I can get it.

Q. Would the same thing be true of the "Lucky Lager" advertisement that we were discussing?

A. Substantially, yes.

Q. Do you have any other advertisements that have been placed through agencies? A. Yes.

Q. Which that you can recall?

A. Well, the Norway Cannery.

Q. Yes. A. Which is McCann Erickson.

Q. Yes. A. Luzianne coffee.

Q. Which agency is that?

A. It is Heintz & Company, Los Angeles.

Q. Yes. A. Hills Brothers' coffee.

Q. And through what agency?

A. They are in San Francisco also. It slips my mind for the moment. [40]

Trial Examiner: Perhaps you will refresh your recollection after lunch and give it to us then.

The Witness: N. W. Ayer & Company.

Q. (By Mr. Grodsky): Who?

A. N. W. Ayer & Company.

Q. (By Trial Examiner): Do the Hills Brothers' advertisements appear under the name and format of a retailer in the newspaper or does just "Hills Brothers" appear without reference to a retailer or do you have both types of advertisements in this relation?

(Testimony of Sumner Hartwell.)

A. Yes, the one that I am specifically referring to is over the name of "Hills Brothers" with no identification of local merchants. However, in practically every edition of our papers, there is Hills Brothers' advertising in the various grocers' own advertisements.

Q. Is that national advertising where it appears in conjunction with the grocer, as you put it before?

A. No.

Q. It isn't? A. No.

Trial Examiner: All right.

Q. (By Mr. Grodsky): Now, Mr. Hartwell, on what basis are you paid for your work? I am not asking now the amount of compensation you receive but on what basis are you paid; is it a [41] percentage? A. No.

Q. On volume of business? A. Salary.

Q. Just a straight salary?

A. Yes. Now, there are occasions during the year, for instance, in October we had a sales contest in which there were monies distributed among salesmen and we have had, at Christmas time, small bonuses that have augmented our salaries.

Q. Again without figures, does your salary represent say, 90% to 95% of your total annual income from the company? A. Yes.

Q. (By Trial Examiner): Getting back to the specific placement of the Hills Brothers' advertisement and how you had one in mind through an agency, do you recall whether that was a single advertisement or for a period of time?

(Testimony of Sumner Hartwell.)

A. We had one advertisement which occurred, that was in July, and one more in October, and that is approximate.

Q. And did they run for the single issue or for a number of issues?

A. They ran for one issue but in all nine zones.

Q. In all nine zones on one specific day?

A. Yes.

Q. And with respect to "Lucky Lager," what was the situation?

A. I believe we have had from spring until now, possibly [42] three "Lucky Lager" advertisements.

Q. In all nine zones? A. Yes.

Q. And they ran in three issues in each zone?

A. Yes.

Q. And when you spoke of July and October and the spring, all periods refer to 1954?

A. That is right.

Q. (By Mr. Grodsky): Now, you testified as to brassiere advertising generally, that you had twenty to twenty-five accounts, who had a quota from the manufacturer for advertising?

A. That is right.

Q. Do you get that business, or what portion of it you get, do you get that from the retailer directly?

A. Directly from the retailer and from solicitation.

Q. Do you have that advertising revenue segregated in any way from other advertising revenue?

A. I don't know how the accounting department handles that.

(Testimony of Sumner Hartwell.)

Q. Who is in charge of the accounting department? A. Al Huber.

Q. And what is his title, if you know?

A. Comptroller.

Q. And is his office located on Magnolia Street and Compton? [43]

A. He is in the Palm Street building.

Q. What is the address of that building?

A. I don't know. It is at the corner of Palm and Alameda.

Q. It is in Compton? A. Yes.

Trial Examiner: I take it that you folks may try to arrive at an approximate figure by stipulation as to the revenue represented by this kind of advertising?

Mr. Grodsky: I will make an effort to.

Trial Examiner: Mr. Kaufman is indicating by signalling, and it is possible that he has some such motion in mind. I presume you are trying to avoid taking these persons away from business if possible.

Mr. Grodsky: That is right.

Mr. Kaufman: Yes, if we have the information available. I have made no attempt to go through any records to determine if there is any breakdown and whether it is made on their defense or the Colonel's or what the Board requires, but I will try to get the information.

Trial Examiner: I would suggest that it be quite precise. That is important in dealing with these commerce cases. I have seen many stipula-

(Testimony of Sumner Hartwell.)

tions, for example, that business is in excess of a number of dollars per year, but govern yourself, it is merely my suggestion.

Mr. Grodsky: Right. I have no further questions from [44] this witness.

Cross-Examination

By Mr. Kaufman:

Q. The agencies that you mentioned, Mr. Hartwell, for instance, on the Norway canners and the Luzianne coffee and Hills Bros. coffee, are all local agencies, aren't they? A. That is right.

Trial Examiner: What agents are you referring to, sir?

The Witness: McCann Errickson, Heintz & Company.

Trial Examiner: I see. I understand now and by "local" you mean Los Angeles and in connection with McCann Errickson, do you mean San Francisco?

The Witness: McCann Errickson is San Francisco and Heintz & Company is Los Angeles. However, McCann Errickson have a Los Angeles office.

Q. (By Mr. Kaufman): Do you deal with that Los Angeles office sometimes?

A. We have in the past. I cannot remember the specific account, sir.

Mr. Kaufman: No further questions.

(Testimony of Sumner Hartwell.)

Redirect Examination

By Mr. Grodsky:

Q. Do you know where the headquarters of McCann Errickson are?

A. I am not sure whether it is Los Angeles or San Francisco.

Q. Do you know whether they have an office in New York? [45]

A. I do not believe so. They probably have representation there and yet I am not certain. They have two offices in Los Angeles.

Q. Do you know where the headquarters of N. W. Ayer & Son is?

A. No, I cannot answer that.

Q. Do you know whether they have an office in New York? A. I don't know.

Q. (By Trial Examiner): Have you dealt with the San Francisco office of McCann Errickson?

A. Actually not, the order came from San Francisco on both these with Hills Brothers.

Trial Examiner: Well, that answers that question.

Mr. Kaufman: I have no further questions.

Q. (By Trial Examiner): One point that I have in mind; do you have occasion to see the issue of one of the nine newspapers every time it comes out?

A. No, not necessarily. That is, to thumb through each edition separately on the day it comes out?

(Testimony of Sumner Hartwell.)

Q. Yes. A. No, not necessarily.

Trial Examiner: All right, that is all I have.

Mr. Grodsky: I have not quite finished.

Q. (By Mr. Grodsky): Mr. Hartwell, before going to work for the Herald Publishing Company, you were employed in the [46] newspaper business?

A. That is right.

Q. Where? A. In Elyria, Ohio.

Q. In what capacity?

A. As advertising manager of a daily newspaper.

Q. In that capacity, did you know of the firm of McCann Errickson? A. Yes, I dare say.

Q. And did you know of the firm of Ayer & Sons? A. Yes.

Q. Did you deal with them? A. Yes.

Q. What office did you deal with at that time?

A. Probably Chicago and Detroit.

Trial Examiner: And you have dealt with them for what purpose?

The Witness: Advertising.

Trial Examiner: Do you remember what kind of advertising?

The Witness: That was fourteen years ago.

Trial Examiner: Do you remember at all?

The Witness: No, I don't.

Trial Examiner: Do you remember any products at all that you had any dealing with either firm, in connection with [47] advertising?

The Witness: Yes, N. W. Ayer. We had one account. If I remember correctly, it was Coca-Cola.

(Testimony of Sumner Hartwell.)

Trial Examiner: Anything else?

The Witness: Not to my best knowledge. [48]

* * *

C. S. SMITH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner: Perhaps you had better speak up, Mr. Grodsky, for this witness.

Mr. Grodsky: Yes.

Direct Examination

By Mr. Grodsky:

Q. Will you state your name and address, please.

A. C. S. Smith and I reside at 206 North Mayo in the City of Compton.

Q. Mr. Smith, what is your position with the Herald Publishing Company of Bellflower?

A. I am the president of the company.

Q. And do you actively participate in the management of the company?

A. I do at the present time.

Q. And did you during July and August of this year?

A. No, I did not in July and August, except, incidentally I might qualify that, it was on a very small part-time basis. [49]

Q. During July and August were you still the president of the company?

(Testimony of C. S. Smith.)

A. Oh, yes, I have been since its inception.

Q. Did you participate in the act of management of the company before July and August of this year?

A. No, never have, except on a very small part-time basis.

Q. And when did you begin to participate more fully?

A. I took over the 1st of September of this year.

Q. And during the period of July and August, who was the general manager of the company?

A. Ralph Brewer had been the general manager for many years. Then he was promoted to vice president and went on an extended vacation. His health was very bad.

Q. Do you expect Mr. Brewer to return—

A. He is back now.

Q. And is he participating in the affairs of the company? A. Oh, yes.

Q. Is it your present intention for him to resume his position of general manager?

A. I couldn't hear that.

Q. Is it your present intention for him to resume his position of general manager?

A. Possibly in the future if his health will permit. At the present time he is on some very important special work which keeps him busy full time so I am pinch hitting until [50] that time comes around.

(Testimony of C. S. Smith.)

Q. Where is the headquarters of the Herald Publishing Company?

A. 218 East Magnolia in Compton.

Q. And is your office there?

A. No, I do not have a regular office. I transact most of my business out of my home.

Q. What operations are carried on at this Magnolia Street address in Compton?

A. Typesetting, composing, stereotyping and part of the press work, and some of the editorial work.

Q. Do you have any other editorial office in Compton? A. In Compton?

Q. Yes.

A. No, not in Compton. Yes, we do. It is in Palm Street, Palm and Alameda.

Q. How is the editorial work broken down as between these two plants?

A. Well, all the speciality magazine work is over on the Palm Street side and then Compton and Lynwood and general supervision over the eastern offices is on the Magnolia Street side.

Trial Examiner: By "eastern" you mean eastern localities in the Los Angeles area?

The Witness: Yes, they adjoin. I think the furthest [51] away is probably ten to twelve miles.

Q. (By Mr. Grodsky): What is the circulation of your newspaper, considering all nine of them now, as a unit?

A. Approximately 142,000 twice a week. I think the Sunday is slightly less than that because there

(Testimony of C. S. Smith.)

are two zones that do not publish on Sunday.

Q. Do you have the same publication date for all of the papers?

A. They are all printed on Wednesday night and on Saturday night.

Trial Examiner: While we are on the subject, with reference to speciality magazines, what are those?

The Witness: That is our "Home and Garden" section which appears in the Compton and Lynwood papers only on Sunday.

Trial Examiner: Referring to General Counsel's Exhibit No. 3 for identification, is that the speciality magazine?

The Witness: That is right.

Q. (By Mr. Grodsky): Mr. Smith, we have stipulated that your company receives the material from the United Press in the form of two weekly news letters. Now, what use do you make of that material?

A. None whatever. I can go back and explain that if you wish me to.

Q. Yes, please. [52]

A. A number of years ago we went daily in the Compton paper and we put in teletype and we subscribed to the wire service and at the end of six months, we were about to go broke, so we threw the whole works out and went back to our once a week operation.

And in order to obtain our first right on this service, if we ever wished to go back into the daily

(Testimony of C. S. Smith.)

business again, which I don't think we ever will be-
cause of the deficit we showed during that time, we
just continued to pay the small amount in order to
hold our priority there.

Trial Examiner: As near as you can remember,
when did that cease, the use of that wire service and
so on that you referred to?

The Witness: It was in 1947, was it Ralph?

Trial Examiner: I do not think we can take his
answer.

Mr. Kaufman: Your best recollection?

Trial Examiner: Yes, I would like to have your
best recollection?

The Witness: 1946, it has been quite a number
of years since the war ended.

Trial Examiner: All right, sir.

The Witness: We do not publish anything but
local news. Now, sometimes there is some need for a
filler at the last minute before we go to press and
then the editors will grab anything they can find
to fill in. [53]

Trial Examiner: Well, counsel may ask you
about that. My question has been answered.

The Witness: Thank you.

Q. (By Mr. Grodsky): I will show you General
Counsel's Exhibit No. 3 for identification, and I
show you page 19 thereof, and I will ask you if
there is an article there which is headed "Canadian
Government Lists Broad Tourist Information." Is
there such an article?

A. I see it here, yes.

(Testimony of C. S. Smith.)

Q. And is the date line on that Ottawa?

A. That is what it says.

Q. Could you tell from looking at that where that originated?

A. No, I cannot. It says at the bottom "U.P." but that could be out of any daily paper. It could be out of canned information which is sent to us by some travel bureau.

Q. Would it be consistent with newspaper people to accredit something to "U.P." if it comes from another source ?

A. This is a magazine which is headed by a girl who has practically carte blanche on it. She doesn't have service to these various letters and wherever she picks the stuff, we have let her go on it because she gets it locally or everything is sent to her by some local agent. There is no policy on it except interesting reading.

Q. Who is the person in charge of this?

Trial Examiner: You referred to a girl, I [54] think.

The Witness: Some girl, I cannot even tell you her name. The salesman's name who handles it is Rogers. I can call the office and find out her name if you wish.

Trial Examiner: Well, let me ask you this. What, if you know, is the authority for the use of "U.P." which to me conventionally means "United Press" at the end of the article?

The Witness: Possibly the sheet that we got from the travel agency had "U.P." on the bottom

(Testimony of C. S. Smith.)

of it. Certainly United Press did not send us this article, because this is what we call speciality or tourist information.

Trial Examiner: Well, does your arrangement, whatever it may be, with United Press, whereby you receive information, does it give you the right to label an item that is taken from United Press, whether from another newspaper or a travel bureau as "U.P." of the United Press?

The Witness: Your guess is as good as mine. I do notice in lots of papers that they do have "U.P." after it.

Trial Examiner: What I am really referring to is your arrangement with U.P.

The Witness: We have no arrangement with U.P. except to pay them so much for this right to stay on the list if we want it, but we do not use it. It is only to retain our accredited position in case we ever wish to go daily again.

Trial Examiner: What I am trying to find out is this; whether you have a right under your arrangement with U.P. as [55] you put it, under which you do not use what you receive, whether you have a right to use the label "U.P." on that information in General Counsel's Exhibit No. 3 for identification?

The Witness: I cannot answer that because I don't know. We have no contract with them and we have no rights at all for that matter.

Trial Examiner: All right.

(Testimony of C. S. Smith.)

Q. (By Mr. Grodsky): Now, I will show you another article on the same page, headed, "Make Low Bid Pocket Papers on Ohio Town."

A. Now, if you wish me to follow that, as I wouldn't guess at this, I can take it down with me and find out the person who picked it up and find out where it did come from, but anything I tell you now would be a rank guess on my part.

Mr. Grodsky: We will discuss this off the record a little bit later.

Q. (By Mr. Grodsky): But I am calling your attention to this article and ask you if the article, the headline of which I read and it relates at the end "U.P."—

A. Yes, but it isn't a news story. It is a traffic story.

Trial Examiner: Well, I take it you don't know.

The Witness: I have told him so three or four times.

Q. (By Mr. Grodsky): I will show you on page 21 of the same issue a column of three articles headed generally, "Animal [56] Anecdotes" and I ask you if the three articles in question bear the date lines of Richford, Vermont, Washington and Laconia, New Hampshire?

A. Well, you can see by the general story that it would not come in under a news release so it has evidently come from another source, and I can tell you we do not subscribe to this.

Trial Examiner: Do animal stories come from Washington, D. C., by the way?

(Testimony of C. S. Smith.)

Mr. Grodsky: I don't know. It just says "Washington."

The Witness: There are many sources that the girl who writes this could pick it up from.

Q. (By Mr. Grodsky): I am now turning to a document which we will label General Counsel's Exhibit No. 4 for identification and it is the first portion of the Paramount Hollydale edition for October 21, 1954.

And I will ask you if on page 8 of that edition there appears an article "College Coeds Discuss Campus Fashions" with a date line of Berkeley and another date line of Austin, Texas, and at the bottom of the article this legend appears "Written for U.P. by Joyce Williams, University of California, and Patricia Strum, University of Texas."

Is that correct?

A. Yes, you have read it correctly.

Q. Is this the kind of material which you get from the [57] United Press?

A. No, sir, it isn't, not so far as I know. I have never seen anything even similar to it coming in on the United Press letter.

Trial Examiner: That last paper has been identified?

Mr. Grodsky: Yes.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 4 for identification.)

(Testimony of C. S. Smith.)

Mr. Grodsky: It has been identified as General Counsel's Exhibit No. 4.

Trial Examiner: Thank you. It is with the reporter is it, so that we do not get it confused with the other papers?

Mr. Grodsky: Oh, yes.

Q. (By Mr. Grodsky): Now, your recent panel cartoon features from the Chicago Sun Times Syndicate——

A. I am not sure where we get them. About August, before Mr. Brewer left on vacation I asked him to get some filler material so that instead of having to set type at night when we were late, so that he would have something to fill up the press, and he got it. What he got I don't know. When we are short of something, we can fill in with almost anything.

Q. Well, do you know that you received a cartoon which you used from the Chicago Sun Times Syndicate?

A. I could not answer that, I don't know. [58]

Q. (By Trial Examiner): But who in the company would be able to furnish that information?

A. The only thing I know about it——

Q. I think it is, in a way, unfair to expect you to testify to something that you may not have any detailed knowledge on.

A. The only thing I know about it, your Honor, is that I did ask Mr. Brewer to get some filler material and he informed me that he had ordered some from an agent in Glendale and at that time I

(Testimony of C. S. Smith.)

instructed the editor whenever they were short of a small amount of type, to use filler material, so that we would not have to hold the presses.

Q. The thing I am referring to is this, so that we can have nailed down or nailed out, the question of whether or not, first, you receive filler material from this syndicate and second, about how often it is used and who in the company could furnish that information?

A. I could furnish the information as to how often it is used. We have nine newspapers twice a week, which makes eighteen newspapers and I counted through four weeks of newspapers and found it in three out of the seventy-two papers that there were one or two columns used.

Q. Yes.

A. Well, I believe you will find that is the average.

Q. Were these Chicago Sun Times?

A. I cannot answer that but I believe Mr. Brewer will be able [59] to.

Q. Mr. Brewer will have that information probably?

A. I think he will have but as to where it comes from, I haven't the slightest idea except it was bought from a local man in Glendale and we pay him for it.

Trial Examiner: Go ahead, Mr. Grodsky.

The Witness: And that was only started in September.

(Testimony of C. S. Smith.)

Mr. Kaufman: Your Honor, I have a question I wanted to pose for the record.

Trial Examiner: Certainly.

Mr. Kaufman: The charges originally mention things that occurred in July and August, the newspaper information that is being introduced by the way of exhibits, they are all in September and October.

It seems to me that the exhibits do not support the charges because there are things in them that have arisen since the so-called labor disputes have arisen, and I am wondering whether I should make a motion to strike from the record as to any discussion which supposedly supports things that might have taken place after these so-called charges were made.

Trial Examiner: Do you make such a motion?

Mr. Kaufman: Yes.

Trial Examiner: I will deny the motion. The question of whether the Board has jurisdiction doesn't turn on whether or not within a given time period, certain alleged unfair labor [60] practices occurred.

Now, just for academic reference, the Board has passed on the matter, and I, myself, have passed on the question, but if you want to argue it on your brief, please feel free to do so.

Mr. Kaufman: I just wanted to keep a record of it.

Trial Examiner: Oh, you are perfectly entitled to do that.

(Testimony of C. S. Smith.)

Q. (By Mr. Grodsky): Mr. Smith, I just want to ask you if you did not use the issue of Thursday, October 21, for your comparison, as to how many of these cartoons you used on a certain given date?

A. I don't remember. I think it was prior to that time.

Q. I want to ask you if it isn't a fact, looking at only—let us look at this one cartoon which appears on Thursday, October 21, and I will mark it for identification as General Counsel's Exhibit No. 5.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 5 for identification.)

* * *

Q. (By Mr. Grodsky): From the format at the top of the page, can you tell in how many papers of your chain this [61] particular cartoon ran, the one that I am showing you?

A. No, I cannot. They have some codes up there but I don't know what they are.

Q. Does it mean anything to you that the word "Norwalk," and the word "Bellflower" and the word "Lakewood" and the word "Paramount," and the words "Los Altos" appear at the top?

A. I think that would have to do with the advertisements on the page because we do happen to know that this advertisement appears in these papers.

Q. (By Trial Examiner): Can you tell from

(Testimony of C. S. Smith.)

what locality that particular General Counsel's Exhibit No. 5 was circulated?

A. I couldn't say.

Q. Did you say it was circulated in Norwalk, Bellflower, Lakewood, Paramount and Los Altos?

A. Yes.

Q. Can you estimate with reasonable certainty what the circulation was in that day for these papers in these places?

A. Yes, it would be 29,500.

Q. (By Mr. Grodsky): Would you know whether this cartoon which appears on the page in question, also appeared in the same page in the same location in the other editions, other than the Lakewood and Los Altos, which is the ones we have here?

A. I cannot say unless I examine those papers. You have the papers and if you care to show them to me—— [62]

Q. As a matter of fact, for your information, I do not.

A. I cannot say, but I can say that this will be discontinued at once as we buy this from a man in Glendale.

Q. (By Trial Examiner): I don't think that has anything to do with the issue before us right now. What your business policy is, is something for you to determine.

A. These were only put in as a filler.

Q. The Board has no jurisdiction or interest in

(Testimony of C. S. Smith.)

what items you choose to carry or not carry in the paper.

A. Well, I can put my answer this way. It doesn't add anything to the paper. It has no value to the paper and we can do just as well without it as we can with it, and when we bought it, it was bought from a local man.

Trial Examiner: I will strike the witness' last statement as it isn't responsive to any question asked.

Q. (By Mr. Grodsky): I will ask you whether the same date issues also carry a cartoon on another page which bears the legend at the bottom, "Released by the Bell Syndicate Inc."?

A. That is what it says on here.

Q. Well, it is the same date; is this the same paper? A. Is it the same paper?

Q. I don't know.

A. I don't either. I cannot tell by reading it.

Q. But is it issued on the same date?

A. October 21st on both of them. [63]

Q. And the former one; by the way, we did not identify that, that is Field Enterprises, Inc., is that correct? A. That is what it says.

* * *

Mr. Kaufman: Let me just say this, sir. For instance, [64] on the cartoons, since we do not run a continuity as I understand it, and since they do not necessarily run in all the papers, as I understand it, we do not keep any figures as such that I

(Testimony of C. S. Smith.)

could help him a bit, nor does the company keep any records at all which I could say to, "Our records show that we issue eighteen newspapers a week and in the eighteen newspapers we printed a cartoon twice." We could not help you.

I think that Mr. Smith knows about as much as anybody about this type of operation in that company for this reason, sir, if I may be elucidative?

Trial Examiner: Sure.

Mr. Kaufman: This is an enterprise that is making no attempt to compete with such as the "Times" or anything like that. This is essentially a throw-away having as a means of revenue essentially and only advertising revenue as the pleadings indicate.

We do not attempt to keep any records that would help him. If I could help him or you or Mr. Smith could, why, we would be happy to do so. I can tell you, all I can tell you is that the local news of the little towns is furnished well and adequately covered. The other news like that, I would say that almost nobody would ever read it and I wished I could say that half an hour on this subject would help him but it wouldn't. [65]

I think you have all the information you could possibly get.

Trial Examiner: We have some evidence of this witness that he did count through some seventy-two newspapers and he encountered three in which cartoons were used.

(Testimony of C. S. Smith.)

Mr. Grodsky: That is right.

Trial Examiner: We have some evidence in connection with one of those that the circulation of the particular paper was some 29,500. [66]

* * *

Q. (By Mr. Grodsky): Mr. Smith, do you have with you the records disclosing the names and addresses of all accounts considered as national advertising for the Herald Publishing Company?

A. We do not have such records, Mr. Grodsky.

Q. You have a category of advertising called "national advertising"?

A. I heard the argument this morning and I was more at sea after it was over than when it started. To my knowledge, we have no national advertising.

Q. Mr. Hartwell's position has been manager of national advertising?

A. It was. It has not been for three months and Mr. Hartwell had no national advertising that I know of. He had local accounts which are used to buying, to putting in daily newspapers, as far as I know, we have no national advertising.

It all depends on what your definition of "national advertising" is. [68]

Trial Examiner: I suspect that the witness is right, Mr. Grodsky, so that we can get into the innards of this situation.

The Board has used a phrase, perhaps it is meaningful, perhaps it isn't. Words have no particular charm for me in these proceedings.

(Testimony of C. S. Smith.)

The important question is whether or not the kind of advertising that has been described, by whatever name you call it, call it "X" if you want to, will fill the policy criterion of the Board, laid down by the Board.

If the Board did not visualize "national advertising" as comprehending this and I find it did, and somebody is dissatisfied with what I did, the Board can correct its language or implement it or do whatever it pleases. I do not think the dispute, if there is any, over the words "national advertising" is of much importance.

Mr. Kaufman: Just so that I can crystallize my thinking, in this early stage of the proceeding, do I take it from what you have said that as far as you, the Hearing Officer is concerned, that if advertising as such is for instance, let us take the typical example of the Ford Motor Company, placed by a local merchant in Compton in the Compton newspaper, is it my understanding that you, sir, take the position at this time and until reversed that this, the advertising, is national within the purview, within the [69] meaning of the Board?

Trial Examiner: No, I did not say any such thing.

Mr. Kaufman: No, I know you did not.

Trial Examiner: What I have done is simply to try to get away from the profitless disputes between counsel and a witness or between two witnesses, as to whether the company uses a given term. I think that is unimportant.

(Testimony of C. S. Smith.)

Mr. Kaufman: Right.

Trial Examiner: The important thing is, what do they advertise?

Mr. Kaufman: Right.

Trial Examiner: And as to whether it fits within the phrase of the Board, "national advertising," that is a matter that fits in and perhaps it isn't important. I don't know yet. [70]

* * *

Q. (By Mr. Grodsky): Now, your newspapers have different offices in different localities?

A. We have offices in Compton, Downey, Norwalk, Lakewood, and North Long Beach. Those offices are for limited purposes only with the exception of Compton.

Q. Addressing ourselves now to the office in Lakewood and the period of June, July and August of this year, did you have one or more than one editorial employees there, if you know?

A. I cannot answer that, I don't know.

Q. And who would know that; would it be Mr. Brewer or Mr. Butler?

A. Mr. Butler would probably know.

Q. And would the same thing be true about who were the editorial employees at North Long Beach?

A. Well, North Long Beach has only had one person as long as I can remember at one time.

Trial Examiner: Editorial employees?

The Witness: Yes.

Trial Examiner: What does "editorial employee" mean?

(Testimony of C. S. Smith.)

The Witness: News writer, somebody that writes the news and I think there was only one in Lakewood, but I do not want [72] to state positively because they may possibly have had a society writer operating between Lakewood and Bellflower, but there would only be one news man there at that time. I know there is only one now.

Trial Examiner: Go ahead, Mr. Grodsky.

Q. (By Mr. Grodsky): On the editorial side of the paper during the period now of June, July and August, Mr. Brewer was the general manager at that time?

A. Mr. Brewer was in charge of everything from wall to wall.

Q. And who was directly beneath him on the editorial side?

A. Oh, I think that would be Mr. Butler.

Q. And what was Mr. Butler's title?

A. Managing editor, I think is what we call him. He has been there so long I don't remember what we do call him.

Q. And did Mr. Butler supervise the activities of all of the employees in the editorial side?

A. Generally, yes.

Q. Were there any supervisors who were under him, who, themselves, supervised the activities of the employees?

A. None that have the job of hiring or firing or issuing definite orders. It has to go back to Mr. Butler.

Q. Now, do you know Mr. Cleland?

(Testimony of C. S. Smith.)

A. Jack Cleland?

Q. Yes. A. Yes. [73]

Q. And what was his title during the same period?

A. Editor or head news man for the Lynwood paper and he is city editor of the Compton paper. He has a dual job.

Q. Does he have a staff of reporters who work under him? A. None whatever.

Q. Are there any other reporters who work on the Compton paper?

A. We have some girl that handles police reporting.

Q. Is she a reporter?

A. Well, we will call her an editorial employee. We are not big enough to have specialized jobs.

Q. Do you have any other employee who has a reporting or editorial job in the Lynwood paper?

A. None in the Lynwood paper. The society editress from Compton may cover some of the social functions of the Lynwood community, but even that, I am not sure of.

Trial Examiner: Would you classify her as an editorial employee, too?

The Witness: Yes, your Honor, they are all more or less general purpose editorial writers.

Q. (By Mr. Grodsky): Would she take instructions from Mr. Cleland?

A. No, she takes it from Mr. Butler.

Q. Was there an employee by the name of Tony Derry in July and August? [74]

(Testimony of C. S. Smith.)

A. Yes, he took Mr. London's place in North Long Beach.

Q. Before he took Mr. London's place in North Long Beach, was he employed by the company?

A. Oh, yes.

Q. Where was he working?

A. I think at that time out of Compton as police reporter or as general feature writer.

Q. To whom did he report?

A. Mr. Butler.

Q. He didn't report to Mr. Cleland?

A. Oh, no, Mr. Cleland was nothing but an editorial man himself.

Q. Did Mr. Cleland, to your knowledge, assign Tony to do any specific reporting jobs?

A. Oh, no, he has no authority. Mr. Cleland is a reporter and a city editor and anything he would tell somebody else to do, well, they would not have to do it if they did not want to, because he has no authority.

Trial Examiner: Well, what does a city editor do?

The Witness: Well, with us, your Honor, it is more or less just a title when he goes before the various business clubs to speak or to report meetings. He is then introduced as the city editor.

A number of years ago we gave these people various titles or they took them themselves. The first time I knew that Jack [75] was the city editor was when I saw it on the masthead of our own paper.

(Testimony of C. S. Smith.)

Q. (By Mr. Grodsky): Do you have an employee by the name of Don Desfor? A. Who?

Q. Don Desfor. A. John Desfor?

Q. No, D-o-n Desfor?

A. I do not recognize the name.

Q. You had an employee by the name of Doris Zerby?

A. No, I do not recognize her. She might possibly be the police reporter. They have some girl that is the police reporter.

Q. My information is that she is the police reporter. A. What was that?

Q. My information is that she is the police reporter.

A. Well, that is the only one I can think of that it would fit.

Q. Has Mr. Cleland ever come to your home to discuss Herald American business with you?

A. A lot of reporters come to my home at various times to discuss feature stories. My office is my home. I do the bulk of my business at my home. That is what I answered, do you remember, when you asked me if my office was in the Herald Publishing Company and I said "no." [76]

Mr. Butler, Mr. Cleland, Tony, they all come to my home.

Q. Did Mr. London ever come to your home to discuss business?

A. Yes, after he had been discharged to discuss why he had been discharged. Mr. Butler was there when he came.

(Testimony of C. S. Smith.)

Q. Prior to the discharge, did he ever come to your home to discuss business?

A. Not that I remember. I did not even know Mr. London by sight.

Q. Now, you mentioned Mr. London's discharge, do you know who made the decision to discharge Mr. London?

A. The final decision was Mr. Butler's after referring it to me.

Trial Examiner: You mean he made the decision after he referred to you?

The Witness: Mr. Butler came to me and said he had a man at Long Beach office who was constantly out or away from the job without permission.

Trial Examiner: That wasn't the question I asked you. I will strike the answer you gave. What I meant was in terms of time, did Mr. Butler make the decision after he referred the matter to you or did he make the decision before it was referred to you?

The Witness: That I cannot answer. I started to tell you exactly what happened, that he told me at——

Trial Examiner: No, I do not want that, but if you are [77] unable to give it to me it is all right.

The Witness: I don't remember whether it was before or after.

Trial Examiner: All right. Mr. Grodsky?

(Testimony of C. S. Smith.)

Mr. Grodsky: Counsel, can we stipulate that the date of discharge—well, can we stipulate as to the date of discharge? I thought it might be of help to the witness.

Mr Kaufman: The date of the discharge I do not think we will have any trouble with it at all.

Mr. Grodsky: It is July 17th.

Mr. Kaufman: I did not deny it.

Mr. Grodsky: I didn't know whether you did or not.

Mr. Kaufman: Well, if you tell me it is the 17th, this is one stipulation I need no authority for and I will say it is the 17th.

Mr. Grodsky: It was just to help me along.

Mr. Kaufman: Sure, let us take that as your date.

Q. (By Mr. Grodsky): How long before the date of Mr. London's discharge were you made aware by Mr. Butler of the difficulty with Mr. London?

A. Two to three weeks prior is my recollection. Between two or three weeks on different occasions he said that he had a man in the North Long Beach office that wasn't on the job and if he did not change and buck up, he was going to have to get rid of him. [78]

My reply to Mr. Butler was, "It is your department. You have to keep order in your own house."

My further comment was that I did not think that the Long Beach paper was quite representative of the Herald American group and I called attention to one or two articles where there had been evi-

(Testimony of C. S. Smith.)

dence, where not even the name of the person or the location of the accident was given.

* * *

Q. (By Mr. Grodsky): Did you have more than one discussion with Mr. Butler about Mr. [79] London?

A. My recollection is that there was more than one.

Q. Beginning about when and about how many discussions and about how were they spaced?

A. Oh, I don't remember.

Q. Well, you did try to give us an indication. You said Mr. Butler complained to you about two or three weeks before.

A. Well, his Honor cautioned me to be careful in answering and I am trying to do that. I don't remember exactly. It was some days before.

Q. Well, I take it now it was some days before the discharge that Mr. Butler spoke to you about his being dissatisfied with Mr. London's performance?

A. Yes, I have answered that three or four times.

Q. When you say, "some days," what is your best estimate of the first time that Mr. Butler mentioned it to you?

Mr. Kaufman: Now, aren't we getting a little bit repetitious? He said it was about two weeks or so.

(Testimony of C. S. Smith.)

Trial Examiner: Yes, he has answered that already.

Mr. Grodsky: All right.

Trial Examiner: He mentioned several times within a period of a few weeks that the conversation arose.

Q. (By Mr. Grodsky): Now, did Mr. Butler tell you before he actually discharged Mr. London that he was going to discharge him?

A. No, I told you before he said, that unless the man in [80] North Long Beach picked up, did a better job and stayed on the job, he was going to have to get rid of him.

Q. Now, after Mr. London was discharged—well, strike that—do you know anything about the circumstances surrounding the discharge of Ray Ross? A. Only generally.

Q. Who made the decision to discharge Ross?

A. I think he was discharged on a seniority basis if my recollection is correct.

Trial Examiner: The question is, who made the decision to discharge him; do you know that?

The Witness: What actual official?

The Examiner: Yes.

The Witness: I do know he discharged nine or ten on one day and I don't know who made the decisions in each case. There was a general meeting of all executives and they were told to cut down the force.

Trial Examiner: I am going to cut down every-

(Testimony of C. S. Smith.)

thing but the witness' statement that he doesn't know who made the decision. [81]

* * *

Q. (By Mr. Grodsky): Mr. Smith, in response to the subpoena, have you brought in the item No. 5 consisting of the payroll records, disclosing names and classifications of all editorial employees, classified advertising personnel, PBX operators and cashiers, after March 1, 1954?

A. I think the records are here.

Mr. Kaufman: The answer to that is "yes." [83]

* * *

Q. (By Mr. Grodsky): Mr. Smith, what was the title of Mr. William Sheets, if you know?

A. I think in an ordinary newspaper, Mr. Sheets would be called a "rewrite editor."

Q. Now, on the old, former Exhibit No. 6, he is listed as "division editor"?

A. Well, it means the same thing. Say, for instance, if you have the same news in five zones, why write it up five different times?

Q. Where was his office? A. Compton.

Trial Examiner: Do I understand that the term "division" would include a certain number of zones; is that it?

The Witness: The term of the title, your Honor, that is his duties. He has no hiring or firing to do of any kind. You see, these little communities are pretty close together. [87] Some of the news fits them all, some of it only one and it is his job to

(Testimony of C. S. Smith.)

coordinate and formulate, so that there is as little repetition as possible.

Q. (By Mr. Grodsky): Mr. Smith, was there a time when Mr. Sheet's office was in Lakewood?

A. I don't think he was ever in Lakewood. I think he was in Bellflower.

Q. Well, when he was in Bellflower, what did his job consist of?

A. I think the same thing.

Q. Did he have any supervision over any of the men in these offices which were in his division?

Mr. Kaufman: Well, now, just a moment, just to keep the record—I don't know how far you want to go.

Mr. Grodsky: I will withdraw that question. You are completely right. It just skipped me.

Q. (By Mr. Grodsky): Do you know when Mr. Sheets was in Bellflower?

A. The early part of this year, I think.

Q. Well, when Mr. London was discharged, who was put in charge of the North Long Beach office?

A. This Tony, that is my recollection of it.

Q. When Mr. Ross was discharged, who was made the editor at Lakewood? A. Tony. [88]

Q. And who took over at North Long Beach then? A. Oh, Fleener.

Trial Examiner: Have we a first name on that?

The Reporter: No, sir.

The Witness: Oney.

Q. (By Mr. Grodsky): Now, do you know

(Testimony of C. S. Smith.)

whether Mr. Sheets was still at Bellflower when Mr. London was fired?

A. I cannot answer that, I don't know.

Q. His work involved the make-up of the various papers within a certain group; is that correct? A. You mean, Mr. Sheets?

Q. Yes.

A. He is in charge of coordinating the news in the papers.

Q. For which papers?

A. Any and all of them.

Q. I am talking now of the time he was at the Bellflower office? A. I don't know.

Q. Who would be the one who would know his job at that time?

A. I haven't the slightest idea unless Mr. Butler would. He was engaged in the same general job that he has now. He was just moved from one office to another, if that is what you want to know.

Q. Is Leonard Lugoff a supervisor?

A. Leonard Lugoff is in charge of the classified advertising. [89]

Q. Does he have the authority to hire and discharge employees? A. He does.

Q. Does Mr. Murray have the authority to hire and fire employees?

A. Only by referring to me.

Q. What do you mean by that?

A. Just what I say.

(Testimony of C. S. Smith.)

Trial Examiner: Well, I suspect that counsel has something in mind about which there may be some doubt. Let me put it this way.

Was he vested with any power or authority to make recommendations to you for hiring or discharging?

The Witness: Well, he could make recommendations but the decision rested with me.

Trial Examiner: Had you ever acted on his recommendations?

The Witness: Yes, on a few occasions.

Trial Examiner: Accepting them?

The Witness: I have used them on some occasions and sometimes I have rejected them.

Trial Examiner: Were these recommendations for hiring or for firing?

The Witness: Both.

Trial Examiner: And I take it you have both accepted [90] and rejected recommendations for both hiring and for firing?

The Witness: That is correct.

Q. (By Mr. Grodsky): What title does Mr. Murray have?

A. Salesman at the present time, I think.

Q. What was his title in June and July of this year? A. I think the same.

Trial Examiner: While we are on this subject, would you go back if you can, to the last time when this gentleman recommended that somebody be discharged. Do you remember such an incident?

(Testimony of C. S. Smith.)

The Witness: Recommended a discharge?

Trial Examiner: Yes.

The Witness: About within the last two weeks.

Trial Examiner: Did you discharge the individual concerned?

The Witness: He recommended two people. We discharged one and transferred one.

Trial Examiner: Did he recommend that both be discharged?

The Witness: I don't think there was any flat recommendation in either case. He was just laying the facts before me.

Trial Examiner: Do I understand he made no recommendations to you?

The Witness: Not an out and out recommendation.

Trial Examiner: Did he make a recommendation that [91] anything be done with specific reference to the matter?

The Witness: He said that something should be done in both of these cases.

Trial Examiner: Were these people who were associated with him in work in any way?

The Witness: Yes, they were both in the sales department.

Trial Examiner: And what connection did he have with their work if any?

(Testimony of C. S. Smith.)

The Witness: He generally accepts my orders on laying out work for them and advertising campaigns to be put on.

Trial Examiner: Well, after receiving his orders, what was his function with respect to these two employees?

The Witness: Well, concerning these two employees, it had come to his attention that one of these was collecting monies and not turning them over and that had occurred over a long period of time, so that employee was terminated. We gave him one week's pay in lieu of notice.

The other one was a man who had been transferred to another territory and he wasn't making good in the territory where he had been previously working, so we moved him back to where he was before.

Trial Examiner: Why was it that this gentleman who made this recommendation to you that something should be done, why was it that he made the recommendation rather than somebody [92] else?

The Witness: Because he is, more or less, my contact man on the deal. He is fairly familiar with the whole operation.

Trial Examiner: Did you regard it as any part of his duties to make such recommendations to you?

The Witness: Shall we say as the head salesman. He isn't the sales manager though.

Trial Examiner: I would take it that that is what a sales manager would be?

(Testimony of C. S. Smith.)

The Witness: Head salesman.

Trial Examiner: And in these cases when the titles are not decisive, it is what the people do, that is why I am trying to find out the relationship between this gentleman and the two employees and between him and you.

The Witness: Sure.

Trial Examiner: Now, had there been any occasion before this when he had made any recommendations to you in words or substance, for some particular course of conduct with respect to an employee who was associated with him at work?

The Witness: He has made recommendations at various times that we employ certain people and I have found him a very good judge of people, and I have O.K.'d practically everyone that he has wanted to employ when we had vacancies.

Trial Examiner: And were these vacancies, jobs in some [93] way that were associated with his work?

The Witness: With the sales department.

Trial Examiner: With the sales department?

The Witness: That is right. He has no contact whatever with any other department.

Trial Examiner: Go ahead, Mr. Grodsky.

Mr. Grodsky: Thank you.

Q. (By Mr. Grodsky): Do you have an employee by the name of Bob Clark?

A. Bob Clark is, shall we say, the head salesman for the Lakewood office.

Q. Does he have any specific title?

(Testimony of C. S. Smith.)

A. I would have to look at the Lakewood Herald American and see what he calls himself. I believe he calls himself the general manager of the Lakewood Herald American.

Q. Are there any other employees in the Lakewood office? A. Oh, yes.

Q. What employees are there in the Lakewood office?

A. Well, they have the circulation man and they have two other salesmen and the classified advertisement girl.

Q. And do any of these employees take instructions from Mr. Clark?

A. The salesmen do and he is also responsible for the general routine of the office. In other words, someone who is under someone else will be reporting to the head of that department in the main office, if they are constantly late or [94] do not do their work, but as to correcting them or hiring and firing he doesn't have the power.

Trial Examiner: Well, has he made recommendations with respect to hiring and firing?

The Witness: Frankly no. He has only had the new job, your Honor, for the last three weeks.

Trial Examiner: I see.

Q. (By Mr. Grodsky): Now, before that time, what was his title if you know?

A. Before that time he was manager of the Lakewood Herald American which consists of himself and one salesman and one classified girl, one

(Testimony of C. S. Smith.)

sales girl and one circulation man but he had no authority ever to watch their work.

He was elected a member of the Chamber of Commerce out there so we gave him a higher sounding title.

Trial Examiner: I see.

The Witness: And when we found out that people were taking advantage——

Trial Examiner: You found people were taking advantage, and what did you do?

The Witness: I discharged one of them and then I put in a rule that he would be responsible for seeing that they were on the job at the time they were supposed to get there in the morning and did a reasonable amount of work during the day.

Trial Examiner: And what do you expect that he would do [95] if he observed that somebody wasn't on time or doing their work?

The Witness: Then his job would be to report it to the head of that department. If it were an editorial employee, he would report it to Mr. Butler. If it were a classified advertisement employee, he would report it to Mr. Lugoff, and if it were a circulation employee, he would report to that department.

Trial Examiner: Well, is there anybody in that office who has the responsibility of telling an employee to perform a given function?

The Witness: Only his sales force, I mean his display advertising force.

(Testimony of C. S. Smith.)

Trial Examiner: And that consists of how many people?

The Witness: Two people.

Trial Examiner: And would he have that responsibility before he was elevated to the manager-ship?

The Witness: Yes, he did but he was only exercising it in a perfunctory manner.

Trial Examiner: Go ahead, Mr. Grodsky.

Q. (By Mr. Grodsky): Who determines the matter of wage increases for the editorial employees? A. I didn't hear you, pardon me.

Q. Who determines the matter of wage increases for the editorial employees? [96] A. I do.

Q. Do you have any policy about wage increases for editorial employees?

A. The only policy is this; we try to pay them as much as they are worth and as much as we can afford to pay them, and and keep up with the going wage.

Q. Now in this exhibit that has been withdrawn, there was some data about wage increases that were given in July of 1954. I notice that you examined that data in the exhibit. Now, was that data incorrect?

A. The reason I told you that that data was incorrect is that it did not go back far enough and gave a very distorted showing of wage increases and what I wondered—well, I wanted to—what I wanted to do was to go back and show you and the court just exactly what the wage policy had been.

(Testimony of C. S. Smith.)

Q. Insofar as that document indicated that there were a substantial number of increases, we will not go into the reasons yet. A. All right. [97]

* * *

Cross-Examination

By Mr. Kaufman:

Q. Mr. Smith, you testified, I believe, that you had 142,000 circulation approximately and then I believe you later on corrected this figure downward a little on the basis that you did not have quite as many on Sunday, I believe, as on Thursday?

A. That is correct.

Q. So then, what would be the total circulation?

A. We put more into Downey to make up for the Paramount division.

Q. What would it run about?

A. Oh, about 120,000. [99]

Q. So we would be right in assuming that it would be between 130,000 and 140,000 in that vicinity? A. That is right.

Q. Now actually sir, are those papers paid for by subscription? Do you sell them on the streets like the "Times" or the "Herald"?

A. Well, Mr. Kaufman, I can only answer that by explaining the way we do business.

Q. Well, please do, sir.

A. We have what we call the "little merchant system" and we start out by giving the papers to

(Testimony of C. S. Smith.)

any carrier, anywhere from eighty to two hundred, and they endeavor to collect for these papers.

The carrier gets a guarantee in addition to 15% I think. We probably collect only 30% to 40% of the circulation.

Trial Examiner: And who are those people not buying any, are they householders?

The Witness: Various citizens that we address the papers to. We take districts, your Honor.

Trial Examiner: All right.

Q. (By Mr. Kaufman): Now, your business is local citizens, it doesn't deal with the out of state?

Mr. Grodsky: I will stipulate to that.

Mr. Kaufman: All right, I will accept the stipulation. We have covered that by stipulation. [100]

The witness: Yes.

Mr. Kaufman: Your Honor, if I may interrupt, am I correct in stating that I am now in cross-examination and if I so desire I may ask the witness questions on direct later by calling him myself?

Mr. Grodsky: Yes.

Trial Examiner: You certainly can. I will free this witness of implication as a so-called adverse witness under the rules of civil procedure applicable to the District Court Rule 436.

Mr. Kaufman: As an adverse witness?

Trial Examiner: Yes.

Mr. Kaufman: All right.

Trial Examiner: And you may call him, of course.

Mr. Kaufman: I have no further questions.

(Testimony of C. S. Smith.)

Redirect Examination

By Mr. Grodsky:

Q. Do you have some newsstand sellers of your papers? A. Pardon?

Q. Do you have some newsstand sellers of your papers? A. Can I explain that?

Q. Surely.

A. I cannot answer it "yes" or "no." We have quite a number of stands around and we will put twenty papers but get back a dime if we are lucky. Either somebody doesn't put the money in [101] or they steal the money before we can get to it.

Q. Do you have any sales through cigar store counters and drug stores?

A. We may have one or two in the whole chain. I can think of one only.

Q. Do you have sales that are through your offices?

A. If people come in and ask for the papers we sell them for ten cents.

Mr. Grodsky: No further questions.

Trial Examiner: Anything else, Mr. Kaufman?

Mr. Kaufman: No further questions.

Q. (By Trial Examiner): Mr. Smith, this gentleman concerning whom you used the word "perfunctory" before, what was his name?

A. Was that the sales manager?

Q. Yes. A. That is Mr. Lou Murray.

Q. Now, without reference to the term "per-

(Testimony of C. S. Smith.)

functory," will you tell me what he does in relation to the other sales personnel in the office?

Mr. Grodsky: May I interrupt, Mr. Examiner, you are referring to Mr. Clark in the Lakewood office, not to Mr. Murray who is the sales manager, I believe.

Trial Examiner: Well, I will find out in a moment.

Q. (By Trial Examiner): There was a gentleman whom you said [102] before had been made president of the Chamber of Commerce?

A. Oh, director of the Chamber of Commerce. That is Mr. Clark.

Q. Now we have the man identified. Now, to go back to the sales people in the office; what does he do in relation to them if anything?

A. Up until last week, your Honor, all he did was he was supposed to supervise them and would make out lists of certain customers and he allocated certain customers to certain salesmen.

Q. When you say he was "supposed to supervise," what was it that he was supposed to do in terms of supervision?

A. Well, can I explain it?

Q. Yes.

A. Mr. Clark is our top salesman in the amount of accounts and dollars and he is so busy himself that he was neglecting to outline the work for the other salesmen.

So last week we called him in and made complete lists of all customers in that district and told him

(Testimony of C. S. Smith.)

to allocate certain customers to certain salesmen and then he was responsible for seeing that those customers were called on.

That was brought about because we found that certain customers were not being called upon at all by anyone so we further outlined the duties of his office and gave him those lists so that he could handle it himself in addition to his [103] other duties.

Q. Now, is it your testimony that he completely failed prior to last week, to discharge that responsibility or is it your testimony that he did not discharge it enough?

A. All I can say is that I think on considered judgment on it, he was doing his own work and was working all sorts of hours and a top man in an organization like that has to work hard, but he wasn't paying enough attention to the people he had to direct.

Q. Well, what attention did he pay?

A. Well, very frankly, I don't think he was paying much attention. He didn't have his list of the customers, that is, his sales lists and he did not check with the salesmen as to what they had sold.

Q. Now, during that period would he give any of these sales people names and addresses of customers? I am not now referring as to whether he did the duties well or poorly. I am just referring to the question, did he do it?

A. Yes, he did some of it. There was one group called the "Faculty" job. He had one man take

(Testimony of C. S. Smith.)

over when he could not handle it. That is the only specific case that I know of where he actually paid attention to the man who worked with him, whose work he was responsible for.

As it is now, he has complete lists for each salesman so now he is responsible for seeing that they call on all [104] customers on his list.

Trial Examiner: Anything more from this witness?

Mr. Grodsky: Just one or two questions.

Q. (By Mr. Grodsky): Again dealing with Mr. Clark, on General Counsel's Exhibit No. 5 for identification, on the second page near the bottom is the masthead—which I believe is what it is called in the trade——

A. Yes.

Q. Of the Lakewood-Los Altos Herald American, and it lists the following personnel, Colonel C. S. Smith, president and publisher; Ralph J. Brewer, vice president; Warren W. Butler, managing editor; Robert Clark, general manager.

A. But you will notice that there is a line between Mr. Butler and Robert Clark.

Mr. Grodsky: That is correct. Louis M. Murray, sales manager; W. L. Sheets, division editor.

The Witness: That is right.

Q. (By Mr. Grodsky): Is that correct?

A. Yes.

Q. And that is for the issue of October 21, 1954?

A. Yes. Mr. Clark was given that title some time in October when he was elected to the Board of Directors of the Chamber of Commerce.

(Testimony of C. S. Smith.)

Q. I will show you General Counsel's Exhibit No. 7 for identification, being a copy of the Lake-wood-Los Altos [105] Herald American, for Thursday, 16th September, 1954, and ask you if the mast-head on that date did not list these people; Colonel C. S. Smith, publisher; Ralph J. Brewer, general manager; Louis M. Murray, sales manager; M. Robert Clark, local manager; W. L. Sheets, division editor; Tony Derry, editor?

A. Yes, that is what I told you in my testimony.

Q. And certainly on this one, since you mentioned it, there appeared to be a line, I will ask you if you can see if there is a line at any point between any of those names?

A. No, that was the lineup at that time but it changed after that. Mr. Brewer was on vacation and he had just taken off. [106]

* * *

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 6 and was received in evidence.) [113]

GENERAL COUNSEL'S EXHIBIT No. 6

(Copy)

Herald Publishing Company of Bellflower
Employment Record

5. The payroll records disclosing names and classifications of all editorial employees, classified

advertising solicitors, PBX operators, and cashiers on and at all times after March 1, 1954.

Editorial

Jack Cleland, City Editor
W. L. Sheets, Division Editor
Oney Fleener, Home & Garden Editor
Jean Julley, Norwalk Editor
Lawrence Moshier, Bellflower Editor
John Echeveste, Reporter
Helen Farlow, Society Editor
Sol London, Long Beach Editor
Jerome Syverson, Downey Editor
Doris Zerby, Reporter
Anthony Derry, Reporter
Mary Jo Clements, Magazine Editor
Norma Montgomery, Reporter
Marion Mattison, Society Editor
Barbara Heath, Society Editor
William Edmond, Reporter
Howard Handy, Sports Editor
Maxine Galt, Society Editor

Cashiers and PBX

Ellen Bettler, General Cashier
Erma Whertley, Cashier and PBX
Beatrice Kirchner, Cashier and PBX
Patricia Miller
Doris Farley, Cashier, PBX
Fayette Petty, PBX

Classified

Leonard Lugoff, Classified Manager
Robert Raschdorf, Classified Sales
Franklin Marshall, Classified Sales
Dorothy Bush, Classified Sales
Dorothy Holt, Classified Clerk
Virginia Streeper, Telephone Sales
Andrea Olson, Telephone Sales
Ruth LaFave, Telephone Sales
Elizabeth Herb, Telephone Sales
Dale Neumann, Telephone Sales
Marie England, Telephone Sales
Barbara Baker, Telephone Sales
Katherine Grant, Telephone Sales
Virginia Fletcher, Classified counter girl
Bertha Reid, Telephone Sales
Gloria Hickey, Telephone Sales.

6. Name and date of employment of all editorial employees employed after March 1, 1954.

Raymond Ross, March 22, 1954, to Aug. 17, 1954
Donald Desfor, May 29 to Sept. 4, 1954
Maxine Galt, July 30, 1954
Arnold Collins, Aug. 9, 1954, to Aug. 17, 1954
Don Widener, Sept. 2, 1954
Earl Griswold, Oct. 11, 1954

7. Name and date of termination of all editorial employees terminated after July 1, 1954.

Sol London, July 16, 1954
Helen Farlow, July 29, 1954

Raymond Ross, Aug. 17, 1954
Arnold Collins, Aug. 17, 1954
William Edmond, Aug. 18, 1954
Donald Desfor, Sept. 4, 1954
Maxine Galt, Sept. 16, 1954
Oney Fleener, Oct. 11, 1954 (transferred to Advertising Dept.)

8. Name and date of employment of all classified advertising solicitors employed after March 1, 1954.

Mary VanAllen, March 29, 1954
Gloria Hickey, April 12, 1954
Patricia Beck, May 25, 1954
Dorothy McGuire, July 12, 1954
Edith Zink, July 13, 1954
Lucille Pfershy, July 14, 1954

9. Name and date of termination of all classified advertising solicitors terminated after August 1, 1954.

Gloria Hickey, Aug. 17, 1954

10. Names and date of employment of all PBX operators and cashiers after June 15, 1954.

Marion Cronk, June 28, 1954—From part-time to full-time 8/30/54
Doris Farley, June 28, 1954
Fayette Petty, Sept. 1, 1954

11. Names and dates of termination of all PBX operators and cashiers after Aug. 1, 1954.

Doris Farley, Aug. 17, 1954

Helen Larson, Aug. 27, 1954

12. A list of all pay increases and bonuses given to editorial employees and classified employees from July 1, 1954, to date, listing the name of employee, date of increase or bonus and amount of increase or bonus.

Marion Mattison, July 8, 1954, \$10.00

Jack Cleland, July 18, 1954, \$15.00

William Sheets, July 18, 1954, \$15.00; 8/22/54,
\$25.00

Jean Jolley, July 18, 1954, \$10.00

Raymond Ross, July 18, 1954, \$5.00

Laurence Moshier, July 18, 1954, \$5.00; Aug.
29, 1954, \$10.00

John Echeveste, July 18, 1954, \$5.00; 8/22/54,
\$10.00

Doris Zerby, July 18, 1954, \$10.00

Elaine Marable, July 18, 1954, \$10.00

Jerome Syverson, July 18, 1954, \$15.00; Aug.
29, 1954, \$5.00

Anthony Derry, July 18, 1954, \$10.00; Aug. 29,
1954, \$5.00

Mary Jo Clements, July 18, 1954, \$10.00

William Edmond, July 18, 1954, \$15.00

Helen Farlow, Oct. 24, 1954, \$5.00

Received in evidence December 6, 1954.

MAXINE GALT

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Grodsky:

Q. Will you state your name and address, please?

A. Maxine Galt, 14633 Atlantic, Compton.

Trial Examiner: What is your last name?

The Witness: Galt.

Trial Examiner: G-a-l-t?

The Witness: Yes. [116]

Q. (By Mr. Grodsky): Mrs. Galt, were you employed by the Herald American during the period of June, July and August of this year?

A. Yes.

Q. In what capacity?

A. Well, part of the time on the copy desk and then I was put on editorial for awhile.

* * *

Q. (By Mr. Grodsky): Mrs. Galt, during the time that you were working at the Herald American, did you have occasion to learn that the Newspaper Guild was conducting an organizational drive?

Mr. Kaufman: Off the record. Counsel, would you please speak up a little louder, too.

Mr. Grodsky: All right.

The Witness: Yes, I did.

(Testimony of Maxine Galt.)

Mr. Kaufman: What was the last question and answer? Would you read it Miss Reporter, please? [117]

(Question and answer read.)

Mr. Grodsky: I will now have this document marked General Counsel's Exhibit No. 8 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 8 for identification.)

Q. (By Mr. Grodsky): I show you a document, General Counsel's Exhibit No. 8 for identification, being a copy of a four-page newspaper in tabloid size, headed, "Los Angeles Guildsmen" and dated Friday, July 9, 1954, and I ask you if you have at any time previously seen a copy of this issue of the paper? A. Yes.

Q. To the best of your recollection, when was the first time that you saw that issue?

A. Shortly after it came out.

Q. And did you have occasion to discuss that issue with any reporters of the—with any representative of the Herald American? A. Yes.

Q. With whom did you have such discussion?

A. Mr. Cleland.

Q. And where did this discussion take place?

A. In the Compton office.

Q. Was any one else present? A. No.

(Testimony of Maxine Galt.)

Q. At what time of the day was it, do you recall? [118] A. I don't remember.

Q. And what is your best estimate as to how long after the date of that issue that you had that discussion with him, if you have any idea on that subject?

A. Well, probably the following week, as far as I can remember.

Q. Do you know what day of the week?

A. No, I don't remember. [119]

* * *

Q. (By Mr. Grodsky): At the time in question, that is July of 1954, were you working in the Compton office? A. Yes, sir.

Q. And Mr. Cleland was working at the Compton office? A. Yes.

Q. What was your job at that time?

A. Society editor at the time.

Q. Were there any employees in the office known to you to be reporters? A. Yes.

Q. Who were employed at that time as reporters, if you recall?

A. Doris Zerby, I believe that is her name, and Don—I don't remember his last name any more.

Q. Is it Don Desfor? A. Yes, sir.

Q. Do you recall an employee by the name of Tony Derry? A. Yes.

Q. Was he a reporter? A. Yes, sir.

Q. Was he working there at that time?

A. I am not sure if he was working down at the Compton office at that time or not.

(Testimony of Maxine Galt.)

Q. To whom did these employees, Doris Zerby and Don Desfor [120] report, if you know?

A. I don't know to tell you the truth.

Q. You don't know? A. No.

Q. Do you know what the duties were of Mr. Cleland?

A. Well, city editor, as far as I understood it.

Q. Well, did you observe what he does as city editor? A. Just how do you mean that?

Q. Well, did you observe whether or not he gives assignments to reporters?

A. Yes, sir, I believe he did on occasions.

Trial Examiner: Well, let me ask you this. I assume there are "city editors" and "city editors." Having seen a play called "Front Page," I don't think there is a city editor such as they dreamed up there, but what did this city editor do, outside of having a title? Tell us what you saw him do, not what you heard.

The Witness: Well, outside of the handling of news items, I really did not see much, because I didn't pay much attention. I was busy in my own quarter of the office and stuck very much to my own business there.

Trial Examiner: I take it you are saying you don't know?

The Witness: That is right. [121]

* * *

Q. (By Mr. Grodsky): Do you know Ray Ross?

A. Yes.

(Testimony of Maxine Galt.)

Q. Did you know him when he was employed by the company? A. Yes.

Q. After his termination, did you have any conversation with any representative of management, concerning Ray Ross? A. Yes, sir.

Q. With whom did you have such conversation?

A. Mr. Clark. [122]

Q. And where did the conversation take place?

A. At the Compton office.

Q. About how long after Mr. Ross' termination did it take place?

A. Well, as near as I can remember, it must have been a week or two afterwards, possibly two weeks.

Q. Now, was anyone else present when this conversation took place? A. No.

Q. What did Mr. Clark say to you and what did you say to Mr. Clark on this occasion?

Mr. Kaufman: Again I am going to object. I know that there was a little different evidence in regard to Mr. Clark than there was in regard to the other witnesses. I do not think there was enough evidence solicited to show that Mr. Clark was a supervisory employee with the power to fire Ray Ross.

And I submit that such a conversation would be hearsay and a violation of the rule. I am very well aware of the court's interrogation regarding Mr. Clark and his duties and his job and Mr. Smith in connection with it and I do not think that

(Testimony of Maxine Galt.)

establishes a supervisory employee within the meaning of the Act.

Mr. Grodsky: Well, I will rest on the status of the record so far as his supervisory status is concerned.

Trial Examiner: What is your recollection of it? [123]

Mr. Grodsky: My recollection is that he definitely supervised the activities of two of the salesmen who were working under him and in addition to that, he was the only person in the isolated office where he was working, who had any kind of supervisory authority at all.

Many of the other employees were supervised by remote control. He was the only person with a supervisory status there.

Trial Examiner: If I understand clearly, there was a breakdown date, as it were, and he had substantially the same duties before and after that date, but with a loose assemblage of duties before the date.

The witness testified that he was performing the duties to some extent. These duties, if I recollect correctly, constituted all the assignments of customers to be called on.

Mr. Grodsky: Well, also the matter of seeing that the office was run. Now there is no doubt about his title. His title was local manager. Now, the fact that he did not choose to assert his authority doesn't change the fact that he had the authority

(Testimony of Maxine Galt.)

and the employees there knew that he had the authority.

Trial Examiner: All right. Well, do you propose, not in terms, but under this 8 (1) or would it be a statement by Mr. Clark with reference to a reason for termination?

Mr. Grodsky: Neither. [124]

Trial Examiner: Neither one?

Mr. Kaufman, in these cases, depending upon the statement involved, it isn't always true that there must be a supervisory status as a condition to be received for a conversation. It may be that there has been a holding out. There are numerous cases in which individuals not specially authorized who may work in various kinds of positions, close to management, such as confidential clerks—I am just reaching out for an example—identified in the minds of employees with management, as for example, sometimes people may have managerial titles with the consent of the management and it is because of the apparent supervisory authority that these statements become permissible.

I had not asked Mr. Grodsky to make a showing because of the presence of the witnesses, but I have enough from him against the background of what has been said about Mr. Clark, definitely to receive the conversation.

I am going to overrule the objection. I don't know what the conversation is yet. That may turn out to show that Mr. Clark isn't competent to say whatever he did say.

(Testimony of Maxine Galt.)

Mr. Kaufman: Before you make your ruling final, will you permit me to make a statement?

Trial Examiner: Sure.

Mr. Kaufman: If the court please, I well understand the court's statements but I do feel that I would like to take [125] this witness on voir dire pertaining to the background that you spoke about, in order to clarify the record.

Trial Examiner: Will that be with respect to Mr. Clark?

Mr. Kaufman: Only with respect to Mr. Clark on apparent or alleged authority.

Mr. Grodsky: I will object to that.

Trial Examiner: She did not testify to that.

Mr. Kaufman: She, however, according to the statement made to the court, must have had some knowledge or she must have had some holding out. I submit that the record taken as a whole, clearly indicated that this man was not a supervisory employee within the meaning of the Act.

I suggest that a conversation between Mr. Clark and this witness, who, incidentally, worked in a different office than Mr. Clark, pertaining to another man is completely hearsay and I do feel that a few questions for the record might establish this fact.

Trial Examiner: Well, if I recollect clearly it isn't on her testimony that foundation is based for Mr. Clark's duties. I am going to overrule the objection to this testimony.

Q. (By Mr. Grodsky): Will you tell us what

(Testimony of Maxine Galt.)

Mr. Clark said to you and what you said to Mr. Clark?

A. Mr. Clark made the remark that Ray Ross had gone to work wearing a union button. Mr. Clark said he had called Mr. [126] Smith and said he would not work with any union member and that if he did not fire him that he would quit.

Mr. Grodsky: I have no further questions at this time.

Mr. Kaufman: I want to make a motion now to strike that conversation from the record on the ground that there was insufficient foundation laid, that it is a hearsay conversation and actually does go further than General Counsel had indicated that it would go.

Mr. Grodsky: I did not make any indications.

Trial Examiner: Well, no, I do not construe it as such. I am going to deny the motion. I will say that the prima facie showing as far as Mr. Clark is concerned thus far, is somewhat scanty, but I think there is enough in the record to warrant this conversation.

Mr. Kaufman: Will you deny it without prejudice, subject to a later motion to strike?

Trial Examiner: Yes, I think so. I am not sold on the showing, I tell you frankly, as to Mr. Clark. I have received the conversation against the background of some authorities along the lines that I have indicated to you.

Mr. Kaufman: Right.

(Testimony of Maxine Galt.)

Cross-Examination

By Mr. Kaufman:

Q. Is your name Mrs. Galt? A. Yes.

Q. Is there a Mr. Galt? [127] A. No, sir.

Q. Are you divorced? A. Yes.

Mr. Grodsky: I will object, Mr. Examiner. I do not see what possible bearing it has on any issue in the case.

Trial Examiner: Well, she has answered the question, and it doesn't make any difference, I can tell you that, Mr. Kaufman.

Mr. Kaufman: I am finding out the background for the record.

Q. (By Mr. Kaufman): Do you know Jack Heller? A. Yes, sir.

Mr. Grodsky: I suggest—well, all right.

Q. (By Mr. Kaufman): What is Mr. Heller's title or position?

A. I don't know what you mean.

Q. Well, maybe I can help you. Do you know Mr. Heller works for a living? A. Yes, sir.

Q. Who does he work for?

A. For the Press Telegram.

Q. The Press Telegram isn't one of Colonel Smith's newspapers, is it? A. No, sir.

Q. And in some ways it covers some of the same areas that Mr. Smith's newspapers does; is that correct? [128] A. I guess so.

Q. Well, you know, it is true isn't it? You

(Testimony of Maxine Galt.)

know that, do you not? A. Yes, sir.

Q. Now, is it not a fact that on many occasions you would have lunch with Mr. Jack Heller?

A. I would not say on many occasions, maybe two or three times.

Q. Is it not a fact that these lunches were social in nature, rather than business?

A. Well, I imagine most lunches are social in nature.

Q. Well, was it not called to your attention that Mr. Heller was a married man and that your having lunch with him as often as you were, and he was a competitor, was very much upsetting to Colonel Smith's newspapers?

Mr. Grodsky: I object. I do not see what the materiality of any of this is.

Mr. Kaufman: May I state for the record what the materiality is?

Trial Examiner: Sure.

Mr. Kaufman: This is an adverse witness and so far as we are concerned, I am certainly thus entitled to show motive or bias of any witness. I am not bringing forth any misconduct as such, but merely to show that this discussion which was in her mind was creating a motive and bias. [129]

Trial Examiner: You are entitled to show this and this pending question I would regard as preliminary to that.

Mr. Kaufman: That is correct.

Trial Examiner: It would have to be connected

(Testimony of Maxine Galt.)

with something in fact here. I will overrule the objection.

Mr. Kaufman: May I have the last question read, please?

Trial Examiner: Yes, please read the last question.

(Question read.)

Trial Examiner: Was that called to your attention; that is the question?

The Witness: Specifically, you mean?

Trial Examiner: Well, it either was or it wasn't. If it was your answer would be "yes," and if it wasn't your answer would be "no," and you are not required to go any further.

The Witness: But I don't understand what the point of it is. I have had lunch with various people that have been married and that—

Trial Examiner: Excuse me a minute. Let us keep something straight here. Counsel is just asking you whether something was called to your attention by somebody.

The Witness: Certainly sir, I knew he was married.

Trial Examiner: No, no, no.

Mr. Grodsky: I want to object to the question on the ground that it is incompetent, and compound. It is obvious that that is where the difficulty is. [130]

I will further object to it that it is vague and indefinite. I think if the witness were asked about

(Testimony of Maxine Galt.)

a specific person who told something to her, it might be that the witness would not have so much difficulty.

Mr. Kaufman: I will restate the question if you want. Do you want me to, your Honor?

Trial Examiner: Well, the witness has already answered and I assume the answer is that she doesn't understand the question.

I was about to help her with it but in face of Mr. Grodsky's position, it isn't my question.

Q. (By Mr. Kaufman): All right. Mrs. Galt did any one in the Smith organization speak to you about the fact that you were having lunch with Mr. Jack Heller on numerous occasions?

A. No, sir.

Q. Never? A. No, sir, not that I recall.

Q. Did any one in the organization speak to you about the fact that you should not have lunch with a competitor, to wit, Mr. Heller? A. No, sir.

Q. Then I take it when you answered the original question that I put to you before it was determined that it was ambiguous and when you answered it "not specifically" or "specifically" with a question mark, what did you mean? [131]

Mr. Grodsky: I will object to that because that question was stricken and no reference can be made of it.

Trial Examiner: The question was stricken?

Mr. Grodsky: It was withdrawn and now he is trying to incorporate it—

(Testimony of Maxine Galt.)

Mr. Kaufman: I said I would rephrase the question.

Trial Examiner: Excuse me, this is something she is supposed to have said when she was being interrogated about the same question and she answered "specifically"?

Mr. Kaufman: The reporter can read it back if you wish.

Trial Examiner: I think so.

(Question read.)

Trial Examiner: I will sustain the objection.

Q. (By Mr. Kaufman): In your job as society editor, that was the title you had, was it not?

A. Yes, sir.

Q. Did that call for you to discuss things with Mr. Clark?

A. How do you mean "discuss things"?

Q. Well, did your work take you into contact with Mr. Clark?

A. Yes, sir, he was at the office on occasions. I had worked with him back in display.

Q. Well, he was working out of a different office from what you were? A. Yes, sir.

Q. Did you go out to see him on any [132] occasions? A. No, sir.

Q. Would he come into the office specifically to see you on business? A. No, sir.

Q. So actually, from a business standpoint, you had no contact with Mr. Clark; is that correct?

A. Yes, sir.

(Testimony of Maxine Galt.)

Q. Now, where did this conversation take place did you say? A. At the Compton office.

Q. He came into the office there? A. Yes.

Q. And you have already told us what he said to you? A. Yes, sir.

Q. And no one but you was present; is that right, Mrs. Galt? A. That is right.

Q. You had access to advertising forms, had you not, Mrs. Galt?

A. I worked at the copy display desk.

Q. You had access to these forms; is that right?

Mr. Grodsky: Well, at what time, Mr. Kaufman?

Mr. Kaufman: At the time she was working there.

Mr. Grodsky: This is an objection, Mr. Examiner.

Trial Examiner: Well, I will overrule the objection. It is preliminary. [133]

Q. (By Mr. Kaufman): Did you have access to that? A. When I worked in display?

Q. As a society editor later, did you have access to those forms? A. If I wanted to, I suppose.

Q. And the advertising forms for the Lakewood paper were also available to you, were they not, if you wanted them?

A. If there was any necessity for me to look at them I suppose so.

Q. Now, Mr. Heller is the—strike that. In a sense, Mr. Heller was a direct competitor to Mr. Clark; is that correct? A. Yes.

(Testimony of Maxine Galt.)

Q. You said you only had lunch with him about three times?

A. I didn't keep track. Occasionally when he would stop at the office, I might have lunch with him but as far as I know, other people in the organization had gone to lunch with him.

Q. Over what period did you go to lunch with him?

Mr. Grodsky: Mr. Examiner, at this time I am going to renew my objection. I do not see that all these questions and answers are getting us anywhere, except wasting time and cluttering up the record.

Trial Examiner: Well, I don't know yet, Mr. Grodsky.

Mr. Kaufman: I will pursue this a very little further, your Honor. [134]

Trial Examiner: Go ahead, sir.

Q. (By Mr. Kaufman): Over what period did you have lunch?

A. During the course of the time I had worked for the paper.

Q. Beginning when and ending when?

A. I had worked for one and a half years for the paper.

Q. And you had lunch with him over this period of time, Mrs. Galt? A. Yes, sir.

Q. Well, there were many times in excess of three, were there not?

A. He did not stop in at the paper too often.

(Testimony of Maxine Galt.)

Q. I said there were many times in excess of three, were there not?

A. I could not say exactly, sir.

Mr. Kaufman: May I consult with a witness, your Honor, will you excuse me?

Trial Examiner: Sure.

Q. (By Mr. Kaufman): Mr. Warren Butler discharged you, did he not? A. Yes, sir.

Q. And your discharge was to take place as of a Saturday; isn't that correct? A. Yes, sir.

Q. Actually you were quite angry and walked out on a Tuesday; is that correct? [135]

A. I was upset.

Q. And you knew by walking out on a Tuesday that you left the paper in the lurch; is that correct?

A. I wasn't thinking of that at the time.

Q. You did know it?

A. Yes, I went in, in the same way and I left in the same way.

Trial Examiner: I do not understand that. What do you mean by "I went in, in the same way and I left in the same way"?

The Witness: Well, I was hired in one a Tuesday before the paper went to press and I left the same day.

Trial Examiner: I see.

Q. (By Mr. Kaufman): You were angry, were you not? A. I was more upset.

Q. You were angry, were you not?

A. No, sir, not at that moment.

Q. Oh, you became angry later?

(Testimony of Maxine Galt.)

A. Not so much mad as upset.

Q. When you said "not at that moment," did you mean that you became angry later on then?

Mr. Grodsky: I object to that, Mr. Examiner, he is just trying to badger the witness. It is perfectly clear what the witness meant.

Trial Examiner: Well, she put herself into it.

The Witness: I was referring to when I walked out, as I thought he was referring to that. [136]

Trial Examiner: Well, tell us if you became angry later and you can answer that "yes" or "no."

The Witness: I suppose so, a little. [137]

* * *

Recross-Examination

By Mr. Kaufman:

Q. Actually, coming back to competition, [139] you knew, did you not, that it would be of interest to Mr. Heller to see certain layouts?

Mr. Grodsky: I will object to that, Mr. Examiner.

Trial Examiner: Well, she can answer whether she knows it. That is what the question called for, whether she knew it was of interest to him.

The Witness: It probably would be.

Trial Examiner: Well, don't give us your guess. Give us your knowledge. The question doesn't call for your guess. Do you know whether it would be of any interest to him?

The Witness: No, not necessarily.

(Testimony of Maxine Galt.)

Q. (By Mr. Kaufman): You had been in advertising yourself, had you not? A. Yes, sir.

Q. And you knew that a man working for the Press Telegram would be most interested in knowing the layout of advertising put out by the Colonel, the Herald American, or one of the Herald American newspapers, didn't you?

Mr. Grodsky: I will object to that. It is calling for a conjecture, surmise and speculation.

Trial Examiner: Well, he is asking her for her knowledge.

Mr. Grodsky: He is using the word "knowledge" but he is asking for an opinion.

Trial Examiner: I cautioned the witness before and I told her we were asking for her knowledge, not her speculation [140] or guess.

Mr. Kaufman: In fairness, your Honor, my interrogation has brought out that this witness has worked in advertising in Compton for the Herald American and she has now sufficient background to form an opinion.

Trial Examiner: The question calls for her knowledge.

Mr. Kaufman: That is correct.

Trial Examiner: It doesn't call for a guess. Go ahead, Madam.

The Witness: Well, the answer would be "yes," I guess.

Q. (By Mr. Kaufman): You also saw Mr. Heller in the evenings, did you not?

A. I do not see what that has to do with it.

(Testimony of Maxine Galt.)

Mr. Grodsky: I will object to the question.

Trial Examiner: Why, Mr. Grodsky?

Mr. Grodsky: Well, I do not think that anything thus far developed indicates any reason for going into anything like that.

Trial Examiner: Well, my feeling is this, Mr. Kaufman. Had you established any reasonable probability of a showing of a motive, I would be inclined to permit it because I think you ought to have latitude in this area.

Mr. Kaufman: May I be heard?

Trial Examiner: Go ahead, sir.

Mr. Kaufman: Did the witness not state that she became [141] angry?

Trial Examiner: What has this got to do with Mr. Heller?

Mr. Kaufman: You said if I had shown any motive or bias. Anger is a motive or bias.

Trial Examiner: Don't you understand that we were talking about the pending question relating to Mr. Clark.

Mr. Kaufman: Other people may have gone to lunch and it is all right to go to lunch, but I am saying that this is a competitor of our newspaper and she not only went to lunch but she went to dinner with him. Actually that has some bearing on why she was fired. [142]

* * *

ONEY A. FLEENER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner: Keep your voice up when you testify.

The Witness: All right, sir.

Direct Examination

By Mr. Grodsky:

Q. What is your name and your address, Mr. Fleener?

A. Oney A. Fleener, 1826 Bales, Compton.

Q. Mr. Fleener, in July of 1954, what was your position with [146] the Herald American?

A. I was combination—advertising editor.

Mr. Kaufman: I did not hear that.

The Witness: May I make a statement just now to show that—

Trial Examiner: I think that would be unwise. Just answer the question and you are doing your duty when you do that.

Q. (By Mr. Grodsky): Do you know Sol London who used to be a reporter at the Herald?

A. Yes.

Q. And you know he was discharged on a certain day? A. Yes.

Q. On the day of his discharge, did you have any discussion concerning his discharge with any representative of the management?

A. It wasn't so much of a discussion as a passing remark.

(Testimony of Oney A. Fleener.)

Q. With whom did you have that conversation?

A. With Mr. Butler out on the street.

Q. About how long after the discharge did this take place?

A. I would say within about one hour or less, but I am not sure.

Q. Now, what did you say and what did Mr. Butler say?

Trial Examiner: Give us the full conversation, please.

Mr. Grodsky: Yes. [147]

Trial Examiner: Between you and Mr. Butler.

The Witness: It was like this. I said, "Sol tells me that he got fired because he belonged to the union."

And Mr. Butler explained to me that he wasn't doing his duties properly and he was discharged because he was taking time off in working for the union when he should have been doing his newspaper duties.

Trial Examiner: Well, this is what Mr. Butler said; is that it?

The Witness: Mr. Butler said he was discharged because he was working for the union instead of working for the newspaper. That is as near as I can remember although it isn't the exact quotes. [148]

* * *

(Testimony of Oney A. Fleener.)

Cross-Examination

By Mr. Kaufman:

Q. As I understand it, Mr. Fleener, you had a conversation with Mr. Butler the same day, as far as you know, that Mr. Sol London, who is sitting at General Counsel's table, was fired; is that correct? A. I did say that.

Q. Now, do I understand from your testimony, that Mr. Butler told you that Mr. London was fired because his work in the paper was inefficient; is that correct?

A. That included the general setup, that his time was taken up with the union and not with the other things that he should have been doing.

Q. Do you—strike that. Did you understand that from the conversation with Mr. Butler that the basis of the firing was that the man's work was not up to snuff, that he had been doing other things; is that your understanding?

A. My understanding is that the union had interfered with his work and that the union activity brought it to a head.

Q. But the head was brought, as I understand it, because his work wasn't up to snuff; is that a fair assumption?

A. He said because he was spending so much time with the [150] union activities.

Q. That his work was suffering, is that right?

A. I drew that conclusion, that was my opinion.

(Testimony of Oney A. Fleener.)

Trial Examiner: And you drew that conclusion from what Mr. Butler said; is that it? Just tell me "yes" or "no," if that is what you drew your conclusion from.

The Witness: Yes, it was involving the union.

Trial Examiner: You said you drew a conclusion. This was an interpretation put by you upon what Mr. Butler said?

The Witness: Yes. [151]

* * *

WILLIAM L. SHEETS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Grodsky:

Q. Will you state your name and address, sir?

A. William L. Sheets, 5922 Clark Avenue, Lakewood, California.

Q. Now, what was your position before the time when Mr. London was discharged; in other words, in July of this year?

A. I was termed an editor of the Lakewood-Bellflower editions.

Trial Examiner: Before we move away from the subject, are you now employed by the Herald American?

The Witness: I am, sir.

Q. (By Mr. Grodsky): Your designation was

(Testimony of William L. Sheets.)

division editor? A. Yes.

Q. Now, during that period of time, and I will ask you about the time later, did you have any discussion with any representative of management which related to the Guild organizing drive?

A. Yes.

Q. With whom?

A. I recall a conversation by telephone with Colonel Smith.

Q. And approximately what date was it?

A. I don't recall. [152]

Q. Well, just as a point of reference, was it before Mr. London was discharged or after, if you can recall that? A. Frankly, I don't recall.

Q. In your best recollection, if you have any, was it more than a month either way of that or have you no recollection at all?

A. I have no recollection as to the date, sir.

Trial Examiner: Well, can you remember the season of the year?

The Witness: Yes, I would say it was in the summer.

Trial Examiner: Which summer; was it this past summer?

The Witness: This past summer.

Trial Examiner: Now, the summer includes the months, as you know, of June, July August and part of September. Have you any recollection which of those months it was?

The Witness: I would estimate probably June or July.

(Testimony of William L. Sheets.)

Q. (By Mr. Grodsky): Now, who initiated the conversation, do you recall that?

A. Colonel Smith.

Q. Now, what did he say to you and what, if anything, did you say to him?

A. I don't recall any statements. I recall that he telephoned me at the Bellflower office and told me he had learned of a movement to organize a Guild in the Herald American, and that he would rather close his papers down than [153] sign up with the Guild.

Q. Did you tell that to any other employee, that is, that you had had this conversation with Mr. Smith and he had said that?

A. Yes, I am sure that I would but I do not recall to whom I made the statement.

Q. Do you recall any discussion with Mr. Lou Murray which involved the Guild organizing campaign?

A. Yes, sir.

Q. Do you recall when your conversation with Mr. Murray took place?

A. Probably within the same span of season. I do not recall exactly when it was.

Trial Examiner: Do I understand that this was in June or July according to your best recollection?

The Witness: That would be my guess, June or July.

Q. (By Mr. Grodsky): Now, could you relate that conversation in any way to the time when Mr. London was discharged?

(Testimony of William L. Sheets.)

Trial Examiner: In other words, was it before or after; that is what counsel is getting at.

The Witness: I believe it was after Mr. London's discharge.

Q. (By Mr. Grodsky): Will you tell us what Mr. Murray said to you?

A. In this specific instance, Mr. Murray visited me at home, at least, he was there when I got home. I came from work [154] around the middle of the afternoon and he told me that he came there, to my home, to see if a union meeting was in progress on my premises.

And I asked him why he assumed that and he said he had overheard me talking to Ray Ross and inviting him over to my patio to pitch horseshoes, and that he had assumed that "horseshoes" was the code word to signify the intention of calling a union meeting.

And he had visited my home to verify it and he apologized for his misapprehensions. [155]

* * *

WARREN W. BUTLER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Grodsky:

Q. Will you state your name, please?

A. Warren W. Butler.

(Testimony of Warren W. Butler.)

Q. And your address?

A. 1208 East Tichenor Street, Compton.

Q. What is your position?

A. They refer to me as "managing editor."

Q. Of the entire chain of newspapers?

A. That is right.

Q. Do you have any activities outside of being managing editor, I mean, business activities?

A. Well, I have a public office.

Q. What do you mean by a "public office"?

A. Well, I represent the City of Compton on the Board of Directors of the Metropolitan Water District and I am also Vice Chairman of the Board.

Q. And does that take any substantial amount of your time?

A. No, not a great deal. I would say about parts of fifteen days a year.

Q. When you say "parts of fifteen days a year," what roughly is the amount of time that you have to spend away from the office in connection with [159] that?

A. Well, on the day that the Board would meet, I would come down to the office probably around 8:00 o'clock in the morning and leave somewhere between 9:45 and 10:30 to get to the committee meeting down here in Los Angeles.

And I would return anywhere from 3:00 until 3:00 o'clock. It is held on the second Tuesday of the month.

Q. And during your absence, who would be in charge of the editorial department?

(Testimony of Warren W. Butler.)

A. No one. As a matter of fact, many times I would call by telephone to give instructions on various things.

Q. To whom would you give instructions?

A. Various people.

Q. Did you use Mr. Cleland as a contact man?

A. Sometimes, yes.

Q. Did you use him more than anybody else?

A. Probably so, he coordinated the news on the Compton and Lynwood papers.

Q. Now, on your vacations was there any specific person who usually took over?

A. Not to my knowledge. I think if it was anything in the matter of authority, it was usually Mr. Brewer who took over when I was on my vacation.

Mr. Cleland had no authority to hire or dismiss anybody or discipline them or raise or lower their salary or anything of that kind. His only activity was coordination. [160]

Trial Examiner: I don't know what you mean by "coordination" here.

The Witness: Well, when you are getting out news, you have to have some way that one person knows what is going on for a whole paper, so that there is no duplication of news, and the thing is properly handled in that respect.

Trial Examiner: That is the way you use the term "coordination" here?

The Witness: That is right. That was his only activity other than reporting news.

Trial Examiner: All right, sir. Go ahead.

(Testimony of Warren W. Butler.)

Q. (By Mr. Grodsky): Now, did your activities at the Water District ever take you away from Los Angeles?

A. Once in a great while, I would say, yes. Probably once or twice a year.

Q. And for how long?

A. There would be some years when I would not be away at all, particularly during the war. Two or three days it would be for a trip over to the Colorada River aqueduct or something like that.

Q. In addition to those, were there any other times when you would be away from more than just the single working days; in other words, overnight trips on business either for the newspaper or for the Water District?

A. I don't recall any since, oh, probably 1951 or thereabouts. [161]

Q. Did you ever have occasion to go up to Sacramento?

A. That is what I am referring to.

Q. The last time was in 1951?

A. I may have gone up—no, let me see—I may have gone up in 1953. I am not sure about that.

Q. How long were you gone on that occasion?

Mr. Kaufman: On which occasion?

Mr. Grodsky: The last occasion when he was at Sacramento. I think the record is clear on that.

Mr. Kaufman: I don't know that it is. I will object to the question on the grounds that it is ambiguous.

(Testimony of Warren W. Butler.)

Trial Examiner: Do you understand the question?

The Witness: Well, I could not state the exact date.

Trial Examiner: Do you understand the question?

The Witness: Yes, I think so.

Mr. Kaufman: I am wondering——

Mr. Grodsky: I will rephrase it.

Trial Examiner: All right.

Q. (By Mr. Grodsky): On the last occasion that you recall going to Sacramento for how long a period of time did you go up there?

A. I think I flew up in the morning and flew back the following evening. I recall one case at least when something came up that I called down here to give instructions over the telephone when I encountered something up there that [162] should have been taken care of by the paper.

Q. It was something to do with the paper?

A. Yes.

Q. It was something to do with the editorial part of the paper? A. Yes.

Q. With whom did you talk?

A. Mr. Cleland, I believe.

Q. You discharged Sol London?

A. Yes, sir.

Q. At the time you discharged him, did you know of his activity on business of the union?

A. I had only heard a vague report which was indirectly, that he had been spending working time

(Testimony of Warren W. Butler.)

in the office down there, soliciting memberships for the union.

Q. From whom did you have the report?

A. I believe it was Mr. Brewer, but it was indirect.

Trial Examiner: Would you keep your voice up, please, Mr. Butler?

The Witness: I am sorry.

Q. (By Mr. Grodsky): All right, when did you have that report?

A. Oh, it was probably a week or two before I discharged him.

Q. Did you discuss it with anybody else?

A. No, I do not recall discussing it with anybody else. [163]

Q. Did you try to verify it in any way?

A. No, I don't believe I did.

Q. Were you having trouble at all with Mr. London? A. Yes.

Q. What trouble were you having with him?

A. Well, I would say about a week or so before I discharged him. I don't recall the exact date now. I arrived at the Long Beach office before noon on a Thursday, shortly before noon, and Mr. London wasn't present.

And I was informed by other people in the office that he had left for the day. I had previously warned him about leaving early on Thursday.

Q. Mr. Butler, did Mr. London have any regular afternoon off?

A. Saturday afternoon off, yes, sir.

(Testimony of Warren W. Butler.)

Q. Is that the only afternoon off, to your knowledge?

A. Well, perhaps I had better point this out. When he worked in the Compton office he worked all day Saturday, and then he had Thursday afternoon off, but that wasn't true after he went to the Long Beach office, because he was always through before noon on Saturday.

Q. Do you know what the situation was with reference to working Tuesday nights in the Long Beach office?

A. I know that he did sometimes. That was of his own accord, however. I never at any time instructed him to work [164] on Tuesday nights.

Q. Why did he pick Tuesday night, if he picked any night, to work?

A. Well, I imagine because the paper was coming out the next day and if he was behind in his work, naturally he would want to catch up with it.

Q. Did you ever observe whether he worked on Tuesday nights?

A. I don't know about observations, but I think I was aware of it.

Q. Did you ever tell him that he should not work on Tuesday nights.

A. No, I do not recall telling him that directly. I know I never instructed him to work Tuesdays.

Q. Isn't it a fact that he took Thursday afternoon off with your knowledge, because he worked Tuesday nights?

A. No, that isn't a fact.

(Testimony of Warren W. Butler.)

Q. Then it was a complete surprise to you when you found out that he was taking Thursday afternoons off?

A. Well, I would not say it was a surprise to me because Sol was very careless about his work any way. He was late in arriving lots of times.

Q. Let us stick to this Thursday that you know of.

A. Yes.

Q. Did he only take the Thursday afternoon off, to your knowledge, on one or two occasions? [165]

A. No, I would say that I knew of several more than that.

Q. Isn't it a fact that Thursday afternoon, it was his regular practice to take Thursday afternoon off?

Mr. Kaufman: I submit that it has already been asked and answered on at least two different occasions.

Trial Examiner: I don't think so. I will overrule the objection.

Mr. Kaufman: I didn't hear you, sir.

Trial Examiner: I will overrule the objection.

Mr. Kaufman: Thank you.

The Witness: I am not certain that it was, no.

Q. (By Mr. Grodsky): How long had he worked at the Long Beach office?

A. My memory isn't very clear on that point, but I would say six or eight months.

Q. And in that six or eight months you were only aware of him taking off Thursday afternoon

(Testimony of Warren W. Butler.)

in the last two weeks approximately of his employment?

A. I did not say that, no. If you will recall, Mr. Grodsky, I told you that I had warned him on one previous occasion about this.

Mr. Grodsky: I am letting the record speak for itself. I am trying to explore the facts that I am interested in.

Q. (By Mr. Grodsky): Do you have a record here by which you can determine how long he worked at the Long Beach office? [166]

A. I don't have it here but I can get it.

Q. Well, if I would suggest to you that he was transferred to the Long Beach office in July of 1953, can you think back and say whether that might be correct?

A. That doesn't sound correct to me. I would say that it was later than that, but I am not positive because my memory isn't clear.

Q. After he first went to work in that office, when was the first time that you can recall that you became aware of the fact that he wasn't working on a Thursday afternoon?

A. It was quite some time after that but I don't recall when.

Q. Well, was it in 1953 or 1954?

A. I couldn't swear as to that.

Q. Did you find out about it in the spring of 1954? Did you know about it then?

A. Probably so.

Q. Did you talk to him about it then?

(Testimony of Warren W. Butler.)

A. I don't recall exactly when it was that I talked to him. I know that it was some time prior to this incident that I spoke of when I did not find him there prior to noon on the Thursday.

Q. How long prior to that, then was it, that you spoke to him?

A. If I were guessing, I would say it would be between one [167] and two months, but I couldn't swear to it.

Q. When you say you are guessing, do you mean that you are just picking a figure out of the air or do you mean that that is your best recollection, but your recollection is hazy?

A. Let us say that my recollection is very vague on the point.

Q. But you do remember talking to him?

A. Very definitely.

Q. Now, on that occasion when you spoke to him, what did you say to him and what, if anything, did he say to you?

A. My memory is vague on the conversation but as I recall, I called his attention to the fact, and that he did have Saturday afternoons off. We were supposed to be on the job five and a half days in the week, too, and that he should not be leaving early on Thursday any more.

Q. Well, I think that you are sort of summarizing the conversation.

A. Well, I don't remember the exact conversation and that is the reason I am trying to give you to the best of my knowledge what I can recall.

(Testimony of Warren W. Butler.)

Q. Well, without remembering the exact words, somehow the Saturday afternoon came into it in some way? A. Yes.

Q. Just what was said that brought Saturday afternoon into the picture? Who said what? [168]

A. I don't know how I can elaborate on that any further than I have already done that would give you any better information because, as I say, my memory of the conversation is very vague as to what actually was said.

Trial Examiner: Where was the conversation?

The Witness: As I remember it was just outside of the Long Beach office. If I have to criticize an employee, I take them away from the other employees where it doesn't become a matter of gossip.

Trial Examiner: Was this on a Thursday or on some other day of the week?

The Witness: It could have been on Thursday but I would not be certain about it.

Trial Examiner: As I understand it, you came to the Long Beach office that day?

The Witness: Yes. The reason I say it may have been Thursday is that in the normal course of my operation, I normally go to all of the offices on Thursdays.

Trial Examiner: On Thursdays?

The Witness: Yes.

Trial Examiner: And do I understand that you found Mr. London was in the office on that day?

The Witness: Yes, I think that is correct. It was around the middle of the day in fact.

(Testimony of Warren W. Butler.)

Trial Examiner: Now, perhaps you can remember whether you [169] had had lunch before you spoke to Mr. London?

The Witness: No, I don't remember that.

Trial Examiner: Well, what time of the day do you normally come to the Long Beach office?

The Witness: Well, ordinarily I would get started from the Compton office somewhere between 10:30 and, oh, even as late as 2:00. I follow that routine every week, so that it is difficult to remember what I might have done on any particular day.

Trial Examiner: What prompted you to talk to Mr. London?

The Witness: Well, I had been going to the office on a number of occasions on Thursday afternoons and I would not find him there. And as a result, I began to become suspicious of what he was doing.

Trial Examiner: How many times had this happened before the occasion you spoke of?

The Witness: Oh, I would say at least four or five times.

Trial Examiner: Had you ever spoken to him about it before this occasion on this Thursday when you were there?

The Witness: I do not recall any conversation, no. It is true that when Mr. London first came to work for us——

Trial Examiner: What were the scheduled hours of work in the Long Beach Office?

The Witness: Well, normally an employee would

(Testimony of Warren W. Butler.)

get there by 9:00 and leave around 5:00 on an average day. Newspaper [170] work is the kind of work where there are variations and sometimes you might leave a little early and sometimes you might get there a little earlier. You do not punch a clock.

Trial Examiner: Well, were there scheduled hours, that is what I am referring to?

The Witness: In a general way, yes.

Trial Examiner: And these you say were from 9:00 to 5:00?

The Witness: That is right.

Trial Examiner: And was there a scheduled lunch period?

The Witness: No, no scheduled lunch period. There again you have that same problem. Sometimes there will be a luncheon at some civic club that a reporter would go to.

Trial Examiner: Does the Long Beach office close on Saturday afternoon?

The Witness: Yes.

Trial Examiner: And at what time is that?

The Witness: Noon, I believe.

Trial Examiner: By "noon," I take it you mean 12:00 rather than 1:00?

The Witness: Yes, so far as I know. I cannot recall of any time being at the Long Beach office exactly at noon but that was my understanding.

Trial Examiner: Was there any time kept of employees' hours of work in the Long Beach office, either by clock or [171] anything else?

The Witness: Not to my knowledge.

(Testimony of Warren W. Butler.)

Trial Examiner: No such system had ever been inaugurated so far as you know?

The Witness: No, editorial work doesn't work in that way.

Trial Examiner: Are employees required to make out weekly or daily reports of their working time? Are they required to summarize where they were or what they did during the working time?

The Witness: No, they are judged on their performance.

Trial Examiner: Is there anybody in the office at Long Beach who has the responsibility of seeing to it that an employee comes in at a given time and leaves at a given time—was there during Mr. London's tenure?

The Witness: To my knowledge, no. Some parts of the business operation I am not as familiar with as I am with the editorial.

Trial Examiner: All right then, go ahead Mr. Grodsky.

Q. (By Mr. Grodsky): Now, just in connection with the hours, do you know whether or not the Long Beach City Council had regular meetings?

A. They met on Tuesday morning to my knowledge.

Q. Do you know what time those meetings started? A. No, I don't.

Q. If I suggested they started at 8:30 in the morning, would [172] that refresh your recollection in any way?

A. It could be but I don't know.

(Testimony of Warren W. Butler.)

Q. It was one of Mr. London's duties to cover that Long Beach Civil Council?

A. Yes, in a way, to get the news of what was going on in the Long Beach City Hall.

Q. When you came to the Long Beach office on Thursday afternoon and saw that Mr. London wasn't there, the first time or two, did you inquire from any other employee as to his whereabouts?

A. I think I did on one or two occasions, yes.

Q. And did the employees tell you that it was his afternoon off?

A. No, they would not have any particular business to tell me that because he was answerable to me, not to the others.

Q. Well, what did they tell you?

A. As I recall about the only thing they did tell me was, well, that he had gone for the day.

Trial Examiner: Do you remember who told you that?

The Witness: I believe on one occasion the man who is in charge of advertising. I don't recall his name at all.

Mr. Grodsky: Was it Irvin Greenhaugh?

The Witness: It could have been. As I recall, there was a change in the management there and I am not certain as to when it took place. [173]

Q. (By Mr. Grodsky): And did you get in touch with Mr. London to find out why he was gone for the day?

A. No, as I say, the thing I was mainly interested in was whether he was making a habit of

(Testimony of Warren W. Butler.)

that or not. In other words, the point as I made before, the main thing in this was performance and naturally, it was like I explained to the man here, there were meetings to cover at noon, there might be something in the early morning, and I recognized the right of the employee, if he had some duties that were out of the working hours, he might go home a little earlier, but to take regular every afternoon off, that is something different.

Trial Examiner: Do you mean every afternoon?

The Witness: I mean every Thursday afternoon.

Q. (By Mr. Grodsky): Now, on the occasion when you talked to him about his habit of taking Thursday afternoons off, do you recall if he admitted to you it was his habit?

A. He claimed it was his right to take it off.

Q. Did he give you a reason for that?

A. No, I don't recall that he did, excepting that he had always had it off and thought he was entitled to have it off.

Q. And did the matter of working on Tuesday nights come up at all in the discussion?

A. If it did, I do not recall, but I would not say that it did not.

Q. I see. Do you know actually how many hours per week Mr. [174] London put in on his job?

A. No.

Q. As an average? A. No.

Q. You don't know? A. No.

Q. Did he ever tell you how many hours he had been putting in?

(Testimony of Warren W. Butler.)

A. He may have but I don't recall.

Q. Did he ever work—strike that. Did he ever ask you for a raise?

A. Yes, on numerous occasions. I do not believe any employee asked me for a raise any more times than Sol London did.

Q. Did he ever get a raise? A. Yes.

Q. Did he ever get a raise without asking for it?

A. I believe so, but I am not certain as to that. From time to time we would figure our salaries were not high enough and we would raise them up somewhat and I think probably he was the recipient of increases on that basis.

Q. Now, on any of the occasions when he asked you for a raise, did he try to justify it on the basis that he was putting in a lot of hours?

A. If he did, I don't recall it.

Q. Do you recall him saying that he was putting in more than [175] fifty hours a week?

A. No, I don't recall any statement of that kind.

Q. You have no idea of how many hours he was putting in?

A. No, I am concerned with performance. Now, I realize that one man can work twice as fast as another man. That happens sometimes. Well, that sort of thing is usually discussed with an employee at the start, pointing out that we expect a good performance and if they are competent they can get it out within a reasonable sort of time.

(Testimony of Warren W. Butler.)

Trial Examiner: Mr. Butler, was there anything special about Tuesday in the way of putting out of papers? Did anything special occur on that day?

The Witness: No, nothing than what I have pointed out previously that the paper went to press the following day.

Q. (By Trial Examiner): On Wednesdays?

A. Yes, if he got behind, he would try and catch up.

Q. Then if I understand correctly, everything had to be set up and this would have to be prepared not later than a Tuesday; is that the case?

A. No, that wasn't true with the Long Beach paper because we did not start making it up until Tuesday afternoon.

Q. By "making it up" what do you mean? You must understand that I am not a newspaper man, I am not in the newspaper business.

A. Well, Mr. London would come up from Long Beach and would [176] watch the printer as he put the type in the paper and point out where he wanted this story and that story.

Q. When, from your knowledge of the business, would the editorial work, the physical task of writing up, be completed in order to meet the press?

A. Well, ordinarily, we would try to get it clear by noon.

Q. On what day?

A. On Wednesday. Of course, that would not be an iron clamp situation. For example, I recall one day on which there was an important meeting in

(Testimony of Warren W. Butler.)

Long Beach and I went down and covered it during the noon hour and got it into the paper.

Q. On Wednesday? A. Yes.

Q. This was a sort of "stop the press" situation? A. In a sense, yes.

Trial Examiner: All right.

Q. (By Mr. Grodsky): May I ask you, who was the man who stopped the press, so to [177] speak?

* * *

The Witness: On one occasion it was myself.

Q. (By Mr. Grodsky): And on another occasion, was it Colonel Smith?

A. Yes, I believe so.

Q. (By Trial Examiner): Had it come to your attention or knowledge through any source that Mr. London spent any time working after 5:00 p.m. on Tuesday night or nights?

A. Well, I think I was aware that he did sometimes, yes.

Q. And was it he who told you on any occasion?

A. It could have been although I cannot say that I specifically remember such as conversation.

Q. (By Mr. Grodsky): Have you seen Mr. London at the Compton office on Tuesday nights at any time? A. Yes, I think I have.

Q. At what time of the evening can you place it?

(Testimony of Warren W. Butler.)

A. That would be difficult to say, but perhaps it was 8:00 or 9:00. [178]

Q. (By Trial Examiner): Now, this was during the time that he was stationed at the Long Beach office?

A. Yes.

Q. And what was he in Compton for?

A. I suppose bringing copy to the machines. You see the last messenger would come up around 5:30. We have a messenger service.

Q. Well, was there any standing practice or rule that news items as a general matter, would have to be into the Compton office by Tuesday at some time or other?

A. Well, no, nothing other than this. Naturally, we find that some employees procrastinate and it is necessary—you hire a lino machine operator to start work at 8:00 in the morning on Monday and if your employees procrastinate in getting copy in, naturally you are concerned about it.

In other words, I am frequently reminding them that promptness of copy is necessary, because we have to keep the machine operators busy. We cannot wait until Tuesday. From our standpoint a reporter can work easier if he can gather up a lot of stories and write them all at once.

Q. On this occasion, which for want of another name, we can call "the warning occasion," when you warned him about taking Thursday afternoon off before he was discharged, fix your mind on that—did you have any discussion with him about the

(Testimony of Warren W. Butler.)

quality of his work as distinguished from the fact that he [179] was taking Thursday afternoons off?

A. We had—I had a discussion with him but I cannot recall whether it was prior or subsequent to that.

Q. Well, on this occasion, did you tell him that he had either procrastinated or delayed or failed to get in any stories on time?

A. I do not think so on that occasion in that conversation but I do not recall the details of that conversation.

Trial Examiner: Right, Mr. Grodsky.

Q. (By Mr. Grodsky): Was Mr. London the only one of your editors of outlying papers who had to come in on Tuesday afternoons?

A. No, I don't think so. I have seen others there.

Q. Have you seen others there on one or more than one occasion?

A. I would say on more than one occasion probably.

Q. Wasn't it the common practice for the reporters to come in on Tuesday evenings?

A. Not necessarily.

Q. I don't know what means, sir. The question I asked you is, was that the common practice?

A. No, I would not say that it was.

Q. About how many times do you recall seeing Mr. London there on Tuesday evening?

A. Oh, perhaps three or four times. [180]

Q. Well, I think a preliminary question should

(Testimony of Warren W. Butler.)

be about how often were you there say after 6:00 on Tuesday evening? A. Every week?

Q. Until when did you say?

A. On Tuesday evenings now I cover the meetings of the Compton City Council so that I am not there all of the evening, but I usually come back by the office after the meeting is over.

Q. Well, what is your usual routine on a Tuesday evening and I am now referring to the period of, let us say, July of this year?

A. Just about what I described.

Q. Well, incidentally, you did not describe it specifically.

A. What more do you want to know?

Q. You would be at the Compton office until the normal quitting time of 5:00?

A. Sometimes later than that.

Q. At what time would you normally leave it in order to go to the City Council meeting?

A. I would go to dinner then I would come back, come by the office and then on to the meeting.

Q. Then what time did you normally leave on Tuesday evening to go to dinner?

A. Anywhere from 5:30 up to quarter of 7:00.

Q. Then when you would return to the office, about what time [181] would you return?

A. You mean——

Q. From dinner? A. After dinner?

Q. Yes.

Trial Examiner: Well, I assume that would vary?

(Testimony of Warren W. Butler.)

The Witness: The actual sessions began at 8:00.

Q. (By Mr. Grodsky): In other words, you would drop by the office and stay anywhere from a few minutes to an hour and then you would go to the council meeting at 8:00?

A. Well, I don't think it would ever be as long as one hour.

Q. But you would stay there a short time?

A. They have preliminary meetings prior to the council meeting.

Q. But it was your practice to get to the council meeting by 8:00?

A. Not later than 8:00. I was often over there quite a bit before 8:00 o'clock.

Q. Would you return to the meeting after the— I mean, would you return to the office after the meeting was over?

A. That is right.

Q. When would that be normally?

A. That has varied all the way from around 8:30 up until midnight. [182]

Q. Then would you stay in the office for any period of time after you returned to the office?

A. It would depend on how late it was, the circumstances and what had accumulated.

Trial Examiner: On any occasion when you returned from the council meetings, did you find Mr. London there?

The Witness: I think probably that I did, but as to saying any specific time or date, that would be impossible. [183]

(Testimony of Warren W. Butler.)

Q. (By Mr. Grodsky): Mr. Butler, you discharged Mr. London on July 17th?

A. I believe that is the date, yes.

Q. That was on a Saturday, wasn't it?

A. Yes, I am sure that it was on a Saturday.

Q. Did you give him any notice?

A. No, I do not believe I did right at the time.

Q. Well, did you give him any notice before you discharged him?

A. Not right at the time. As I understand it, he was given two weeks' pay in lieu of notice.

Q. Now, when you went out to effect the discharge, did you have a final check with you? [184]

A. I don't recall about that. It seems to me that I had one check but I would not be positive of it.

Q. Do you recall what you said to him?

A. Not clearly, no, I don't think so.

Q. Mr. Butler, did anyone give you a Guild application card?

A. I don't think anybody gave me any but there was a lot of them laying around the office.

Trial Examiner: Which office is that?

The Witness: The Compton office.

Trial Examiner: While we are on the subject, what was the pay period for employees?

The Witness: Well, we are paid on Friday for the preceding week.

Trial Examiner: Monday through Friday, is that the case?

The Witness: Yes, on a weekly basis.

(Testimony of Warren W. Butler.)

Q. (By Mr. Grodsky): Monday through Saturday it would be?

A. Well, that would be correct.

Trial Examiner: For the preceding week?

The Witness: Yes.

Trial Examiner: That would be, for example, payment on this Friday would be for last week's Monday through Saturday?

The Witness: That is right, as I understand it. You see in the shop, for example, the pay is very complex and it takes a while for the bookkeeper to work it out after the shop time cards come in for the preceding week. [185]

Trial Examiner: All right.

Q. (By Mr. Grodsky): Mr. Butler, did you discharge Ray Ross? A. Yes, I believe I did.

Q. Now, what were the circumstances which led up to Mr. Ross' discharge?

A. Well, that was in the middle of the summer and as I recall it, business had been somewhat slack and as I remember, we had two or three meetings at which we discussed that we might have to cut down expenses and it was as a result of that, as I recall.

Mr. Kaufman: Mr. Butler, would you please speak up? At times I have difficulty in hearing you.

The Witness: I am sorry, my voice doesn't carry very good.

Mr. Kaufman: All right.

Q. (By Mr. Grodsky): Was the decision to fire Ross a sudden decision or was it slow in coming?

A. I would say that it was slow in coming be-

(Testimony of Warren W. Butler.)

cause we had been talking about this problem for quite some time.

Trial Examiner: Who do you mean by "we"?

The Witness: Mr. Smith and various executives of the paper. It was a common economic problem. The summer business was unusually slow.

Q. (By Mr. Grodsky): Was the decision to fire Ross made by you or by someone else?

A. Well, I would say that, as to the individual, it was made [186] by me.

Q. Now, would you explain that a little further?

A. Well, the point that I was saying there, we had several meetings about this problem of expenses.

Q. Yes.

A. And the various phases of that were discussed in considerable detail and different people would be discussed but so far as the decision was concerned, it would be my decision as to a particular individual.

Q. As I understand your testimony, and correct me if I am wrong, the discussions were going on during this period between you and Mr. Smith?

A. Yes, and Mr. Brewer.

Q. And Mr. Brewer? A. Yes.

Q. And anybody else?

A. I believe I recall at one meeting Mr. Murray was there, yes.

Q. When did that particular meeting that you recall take place? A. I don't recall.

(Testimony of Warren W. Butler.)

Q. I am talking about the one now at which you recall Mr. Murray was present?

A. I don't remember which one that was.

Q. What time of the year was it, what month or what date, if [187] you can state it? That is, the date these meetings began at which the company executives expressed their anxiety about business.

A. I would say probably early in July, although somewhat earlier in the year, there was some concern, too.

Q. Now, early in July there was some misgiving about the nature of the business?

A. That is right.

Mr. Kaufman: Just a moment, before we pinpoint the date, the date he says, I would say, do I understand that the witness knows definitely or "He would say"?

Mr. Grodsky: Well, I will rephrase the question and I will ask the witness.

Mr. Kaufman: All right.

Q. (By Mr. Grodsky): What is your best recollection as to the date or approximate date when these conversations began with reference to slack business?

A. Well, I would say the series of meetings that I referred to would have begun around the 1st of July and possibly four or five days after that.

Q. Fine. Now, what was discussed at the first of these meetings, if you have any recollection about it?

(Testimony of Warren W. Butler.)

A. Well, mainly the necessity of making the out-go and the in-take have a reasonable balance.

Q. Was there any decision made as to what the executives [188] would do with reference to achieving that goal at that meeting?

A. The first meeting you say?

Q. Yes.

A. If I remember correctly, there wasn't anything definite on that issue.

Q. Was a determination made to explore the possibility of cutting down expenses?

A. Yes, I think that would be discussed.

Q. Was there any decision made as to having other meetings to see what could be done?

A. Well, no, I don't think there was any date or anything like that fixed in advance. We were all around every day and it was a matter of getting together, that was all.

Q. About how long after the first meeting was the next meeting that you recall which relates to this subject?

A. I couldn't place that. I remember three or four of the meetings but as to what dates, I couldn't place them. The only reason that I place the one about the 1st of July is, because I remember very distinctly that that is when business began to fall off.

Q. Now, at any of these meetings, do you recall any definite decision as to what could be done to meet the financial situation that you have described?

(Testimony of Warren W. Butler.)

A. No other than the general conclusion that we would have to [189] cut the payroll.

Q. Now, that general conclusion was reached at one of these meetings? A. Yes.

Q. What is the approximate date of the meeting at which that decision was reached?

A. I would say it was probably sometime in August, but I could not say for sure.

Q. Was there anything specific decided among the executives present at that meeting, as to what would be done in order to achieve the payroll cut?

A. No, I don't recall that there was anything definite. I think Mr. Smith called me later and said, "Well, we will just have to do something about this."

Q. How long after the meeting that you just testified about, the meeting at which it was decided to cut the payroll, about how long afterwards did Mr. Smith telephone you?

A. I think it was shortly before I relieved Mr. Ross.

Q. When you say "shortly before," was it a matter of days or weeks?

A. It could have been the same day and it could have been the previous day, I am not sure about this.

Q. What did Mr. Smith tell you in this telephone call?

Q. He said, "We will have to cut down. We have not got the money to keep all these people on the payroll." [190]

(Testimony of Warren W. Butler.)

Q. Did he specify whom you would have to cut down? A. Not specifically I don't think.

Q. Well, did you discuss different people?

A. I believe that we did but I don't know whether I could recall the details of it or not.

Q. Well, try and give us your best recollection of what Mr. Smith and you said in that telephone conversation?

A. Well, the thing I distinctly remember more than anything else is the fact that he said we had to cut down.

Q. Now, that is the most distinct thing?

A. Yes.

Q. Now what else was said that you can remember? Now, take your time and give us the benefit of your recollection.

A. I think if I remember rightly, something was said about other things being equal, it would be the people who were most recently employed.

Q. How many people did he instruct you you would have to let go, if he did—I don't even know that he did?

A. I don't remember that it was stated, not exactly that way any way. I don't think it was stated in exactly that way.

Q. How many people, in fact, did you discharge?

A. Well, on the particular day that Mr. Ross was discharged, I also discharged another fellow who worked at the Norwalk office. I don't recall his name now.

(Testimony of Warren W. Butler.)

Trial Examiner: It would not be Mr. Collins, would it? [191]

The Witness: Yes, that is right, Mr. Collins.

Q. (By Mr. Grodsky): Anybody else?

A. Not that I can think of on that day. There was one other subsequent to that.

Q. Was that as a result of this layoff?

A. Yes.

Q. How long afterwards?

A. I am not sure about this but if my memory serves me correctly, it was about the end of that week.

Mr. Grodsky: May I see General Counsel's Exhibit No. 6, please?

Q. (By Mr. Grodsky): I will show you, Mr. Butler, General Counsel's Exhibit No. 6 which was prepared by the company from its records. It shows that—well, on this paragraph numbered 6, are the names of the various employees who were discharged. A. Yes.

Q. Now, looking at that, will you tell us, were you referring to Don Widener? A. No.

Q. Well, looking at that again, tell us who you were referring to, please?

A. I imagine it is William Edmond.

Q. Where is his name?

A. Up here (indicating). [192]

Trial Examiner: Item 7.

Mr. Grodsky: Excuse me?

Trial Examiner: Item 7 on the exhibit of August 17th.

(Testimony of Warren W. Butler.)

The Witness: You see Mr. Edmond was laid off as a regular employee. However, he still continued to take pictures for us on occasion and since then we have used him on various irregular employment.

Q. (By Trial Examiner): Now, I notice that Mr. Collins whom you referred to was first hired by the company on August 9th?

A. That is right.

Q. He only worked a few days?

A. He only worked a few days, that is right.

Q. Did he replace someone?

A. I am trying to think what was involved there and it isn't clear in my mind now. You see, the thing that confuses me is that all of this while there were people on vacations and we do a lot of shifting around when they are on vacations, so it is a little bit difficult to say just what was involved there.

Q. (By Mr. Grodsky): Did you discuss with Mr. Smith, the possibility of terminating Donald Desfor?

A. No, Mr. Desfor left of his own accord. He had another job.

Q. Yes, I understand that, but I am talking now at the time that you were discussing with Mr. Smith the necessity of laying off or discharging people with reference to cutting the [193] payroll, did the name Desfor come up?

A. I don't think I ever discussed Mr. Desfor at any time. Mr. Desfor was in the classification of

(Testimony of Warren W. Butler.)

what you might call an apprentice. He wasn't actually called that in the editorial field, but that is what it amounted to.

Q. (By Trial Examiner): Was there any difference in the duties of Mr. Ross and Mr. Desfor?

A. Oh, yes, very much so.

Q. What were they?

A. You see, Mr. Ross was editing the Lakewood edition. He had the responsibility of seeing that the front page was developed properly and that sort of thing, whereas Mr. Desfor was only doing reporting. He wasn't even writing heads. He was a boy just out of U.S.C., so to speak.

Q. And who wrote the heads and the first page after Mr. Ross left? I mean, immediately after he left?

A. If I remember correctly, it was Mr. Fleener, but I am not sure. We had Mr. Derry there for a while in Lakewood and then we shifted him back to Long Beach and it was quite a complicated situation there and at this time I don't remember all the details.

Q. Do I understand you then correctly, that Mr. Ross' duties included the types of work that Mr. Desfor would do, but it wasn't that way in reverse?

A. That is correct, yes. [194]

Trial Examiner: All right.

Q. (By Mr. Grodsky): What kind of work did Mr. Don Widener do?

A. He would be in exactly the same kind of a classification as Mr. Desfor.

(Testimony of Warren W. Butler.)

Q. And Earl Griswold?

A. He was hired quite some time later than that.

Q. That still doesn't answer my question. What kind of work does he do?

A. Well, at the present time, he edits the Lake-wood edition.

Q. Was the only reason that you laid off Mr. Ross because you had this economic problem?

A. Well, two things were in consideration there. One was that he was a fairly recent employee and the other was that while Mr. Ross did a reasonably good quality of work, he was extremely slow.

Q. Did you know that Mr. Ross was a union member?

A. He told me that he was at the time that I dismissed him.

Q. Was that the first inkling that you had that he was a member of the union?

A. Well, at that time there were all sorts of rumors floating around. I don't know, other than I had heard it some time, previous to that he informed that he not only was not a member of the union but that he had no use for the union and did not want to work under union conditions. [195]

Q. (By Trial Examiner): Will you relate the circumstances under which he told you that?

A. It was just a matter of conversation in the office.

Q. Well, who brought the subject up first?

A. At first? I don't remember that. He told me

(Testimony of Warren W. Butler.)

that he had previously worked on a paper called the "Tidings" where he had to punch the clock at certain times every day, and as he said, "I had somebody looking over my shoulder all the time," and he said, "I did not want to work under these kind of conditions again."

Q. Well, what did the union have to do with it; did he say in the conversation?

A. Well, he said if it was like what it was in the Guild shop that he would have to work under these conditions—I did not make the statement, he made the statement.

Q. Now, getting back to the time he was discharged, you say at that time he told you he was a member of the union? A. Yes.

Q. How did that arise?

A. Well, when I told him he was being laid off, he accused me of laying him off because he was a member of the union. He said, "Here is my button."

Q. Where was his button?

A. On his shirt.

Q. Had he just put it on in your office or was it on before? [196]

A. I don't have any idea, except prior to the time that he pulled his shirt out so as to show it to me.

Q. (By Mr. Grodsky): At what place, in what office, was Mr. Ross at the time you had notified him that he was discharged?

A. It was out in front of the Lakewood office.

Q. Which is where he is employed?

(Testimony of Warren W. Butler.)

A. Yes.

Q. You had called him out in order to tell him that? A. Yes.

Trial Examiner: Excuse me, so that we may be clear, Mr. Desfor worked where?

The Witness: In the Compton office.

Trial Examiner: And Mr. Ross worked there also?

The Witness: No, Mr. Ross never worked at the Compton office.

Trial Examiner: And Mr. Widener worked where?

The Witness: At the Compton office.

Trial Examiner: Mr. Collins?

The Witness: One or two days in the Norwalk office and then over at the Bellflower office.

Trial Examiner: And Mr. Griswold?

The Witness: Well, Mr. Griswold since his employment, has been in the Lakewood office. You see, prior to this time, he was employed by a competitor down there. The competing newspaper was sold and Mr. Griswold as a result was out of [197] a job and he came to work for us.

Trial Examiner: And Mr. Edmond, what office did he work in?

The Witness: Well, for a while he worked at the Compton office and then later out of the Downey office.

Trial Examiner: And at the time of his lay-off, he was in what office?

The Witness: The Downey office.

(Testimony of Warren W. Butler.)

Mr. Kaufman: What was that last name?

The Witness: Edmond. Could I point out something a little further?

Trial Examiner: Do you want to explain your testimony?

The Witness: Yes, he was taking care of our Paramount edition and we do not have any office in Paramount and after we tried it out for a few days, we thought it would be better to have him working out of the Downey office.

Trial Examiner: All right.

Q. (By Mr. Grodsky): Do I understand you that you were not aware of the fact that Mr. Ross was wearing the union button until after you had given him his check and told him he was discharged? A. That is right.

Q. Was the button covered up by anything; you indicated it was on his shirt?

A. No, I didn't notice it until he pulled out his shirt to [198] make it prominent.

Q. You say "he pulled out his shirt"; that again brings me back to the question: Was the button hidden by anything?

A. I don't recall that it was but I didn't see it until he did that.

Q. How long had you been in the Lakewood office that morning, Mr. Butler, before you—

A. This wasn't in the morning.

Q. How long had you been in the Lakewood office that day before you asked Mr. Ross to step outside? A. I don't think I was very long.

(Testimony of Warren W. Butler.)

Q. Was it more than ten minutes?

A. Possibly fifteen.

Q. And when you came, what was Mr. Ross doing?

A. I am not positive but it seems to me that he was talking to someone who had come in to give him some news. That is my recollection as near as I can recall.

Q. And how long was he engaged with this other person in conversation?

A. Well, it would have been ten or fifteen minutes.

Q. And as soon as he was free, you asked him to go out?

A. That is right.

Q. He did not do any other work while you were there, such as making up the press?

A. Well, we have no shop in the Lakewood office. [199]

Q. Well, wasn't he preparing his story and getting ready his make-up?

A. He might have been preparing his stories but other than that—you see, the paper isn't actually made up in that office.

Q. Well, let me rephrase my question. Was he, in fact, making up the stories for the Wednesday paper?

A. It could be, I don't recall noticing what was on his desk. To the best of my recollection he was talking to someone who was in to give him some news.

Q. What day of the week was it?

(Testimony of Warren W. Butler.)

A. If I remember correctly, and I am almost positive I am right, it would be on a Tuesday.

Q. Now, on Tuesday usually the reporters in these outlying offices of yours are busy, aren't they?

A. Well, they are fairly busy every day.

Q. Aren't they especially busy on Tuesday?

A. It could be.

Q. Well, you should know. I don't want any speculation.

A. Well, it isn't something that is always necessarily true. Probably on the average it would be true. Sometimes they will work fast and they have got their work in good shape and they are through early; at other times they are slow and they are late.

Q. What time of the day was it that you were out there? [200]

A. I am not entirely positive but I would guess that it was around 4:00 o'clock.

Q. And did you advise him of his discharge before he had his stories ready?

A. Well, newspaper work is continuous. It doesn't just come up to an abrupt situation.

Q. Did you ask him whether he was ready with his work for the Wednesday paper in words or substance?

A. No, I think that he, himself, asked me whether I wanted him to do further work or not and my reply was, "Well, it is up to you, whatever you want to do yourself."

(Testimony of Warren W. Butler.)

Q. You are talking now about after the discharge?

A. Yes, that is the only conversation of that kind that we had, that I had with this man.

Q. You had no conversation with him prior to the discharge?

A. Other than to tell him we were cutting down and would have to lay him off.

Q. And it is your testimony that you did not inquire from him the status of his work for that day? A. No.

Q. Before that? A. No.

Q. You did not?

A. No, I did not inquire into the status of his work at any time before that. He only volunteered the information. [201]

Q. Now, how large is that union button, could you estimate? Would you say it is as large as a quarter?

A. If I remember now correctly, it would be approximately about the size of a quarter.

Q. And do you know what color it is?

A. No, I could not say that, I don't remember the color. As a matter of fact, to my recollection it is the only one that I have ever seen.

Trial Examiner: On this day, August 17th, was Mr. Ross wearing the jacket of his shirt?

The Witness: I don't think he was. As I remember, it was a fairly warm day and he did not have any jacket on. I could be mistaken, but that

(Testimony of Warren W. Butler.)

is my recollection. At least, he had no vest on. His shirt was open.

Q. (By Mr. Grodsky): At the time that you discharged Mr. Ross, did you tell him why he was being discharged?

A. I think I have already answered that. I told you that we were cutting down and therefore would have to let him go.

Q. Did you give him his final check?

A. No, as I remember I suggested to him that he get in touch with the Compton office and they would provide his check.

Q. Did you give him any notice?

Trial Examiner: He has testified to that already.

The Witness: Not as to when he was to stop work. As I remember, he was paid a couple of weeks in advance or something [202] of that sort.

Q. (By Trial Examiner): Well, didn't you tell him as of when he was to stop?

A. Well, I think he asked me. You remember I said he asked me whether I wanted him to finish getting out the rest of the material for that evening?

Q. Yes.

A. And I said, "You can do as you please."

Q. Yes, but the point I am trying to get at is this; did you tell him as of when he was through?

A. I think he asked that and I said, "Well, as far as I am concerned, you can finish your work right now, if that is what you would like to do."

(Testimony of Warren W. Butler.)

You see, that was after he had asked me whether I wanted him to finish up that night or not.

Q. Really what I have not got too clearly in my mind is all the details of the conversation here, but I understand that you came to the office and you and he went outside? A. That is right.

Q. In front of the office? A. Yes.

Q. Now, beginning from that point on, will you please tell me what happened between you?

A. Well, as I remember I said, "Well, we are going to have to cut the payroll as the old man tells me, because we cannot make it as it is and for that reason I am having to let you [203] go."

And he asked, "Well, do you want me to finish up tonight?" and I said, "Well, whatever you want to do. It is all right with me if you want to, and if you don't want to, it is all right with me."

Q. And the question of his pay check came up?

A. I think I stated that information as I remember it. I said, "If you get in touch with Compton, they will pay you off, and my understanding is that you will be paid up in advance in lieu of notice, and you will have this additional money."

Q. Would you be good enough to keep your voice up?

A. I will try the best I can. My voice, however, isn't a strong voice. You don't have by any chance any water around here? My throat is getting very, very dry.

(Testimony of Warren W. Butler.)

Q. (By Mr. Grodsky): Mr. Butler, did you have any responsibility in the matter of wage rate increases for employees in the editorial department?

A. From the standpoint of recommendations, I would say that was correct, yes.

Q. In other words, if you felt that an employee warranted an increase, you would [204] recommend it? A. Yes.

Q. And was your recommendation generally looked upon as favorable by management?

A. Generally I would say that would be true but not always, however.

Q. Now, during the month of July of 1954, there were some wage increases granted in the editorial department; is that correct?

A. Yes, my understanding is there were, yes.

Q. Did you have anything to say about these wage increases? A. Yes.

Q. Did you initiate the request?

A. Well, that is a little bit hard to say because Mr. Smith and I had been discussing the subject of wages, I imagine, for oh, at least four or five months prior to that time.

Q. What had caused you to discuss it for that length of time?

A. Well, the discussion I would say was rather complicated. In other words, it involved how many people it took to get out so many pages, and whether our wages were in line with the general prevailing trend, how much our business would

(Testimony of Warren W. Butler.)

stand; all these things were taken into consideration.

My concern mainly was a matter of whether I could have enough people to get out the paper.

Q. Did you have enough people at that time to get out the [205] paper?

A. Yes, I would say that I did.

Q. Let us pinpoint the time now. You say this was four or five months before July?

A. Well, there had been discussions all during that time.

* * *

Q. (By Mr. Grodsky): Now did you tell Mr. Smith in words or in substance, that were suggestive of this that you felt the staff was underpaid?

A. No, I don't think that I did, sir. It was more his position than mine. In other words, his tendency has usually been, fewer higher paid people are better than a lot of underpaid people.

Q. And did he want to increase the wages; was that the tenure of the discussions? A. Yes.

Q. And that began some time in the spring of 1954?

A. Well, I would say that I had talked to him about this at least as early as May, perhaps earlier.

Q. Did you give him reasons as to why he should not increase the wages?

A. No. I said that I hoped that in the fall we could get to a position where we could do it, but I was fearful that if [206] we had to pay more and then cut down on the number of people, that it

(Testimony of Warren W. Butler.)

would be difficult to get the papers out because I was perfectly aware that we had only a limited amount of income with which to meet the expenses.

Q. Do I understand you correctly now about what Mr. Smith said? Mr. Smith wanted to cut down on the number of the people and to increase the wages of those who remained?

A. That is right.

Q. That is what I had in mind. A. Yes.

Q. Did he specify the number of people he wanted to cut down? A. No. [207]

* * *

Q. (By Mr. Grodsky): Mr. Butler, in your discussion with Mr. [210] Smith between May and August, did the question of the number of people in the editorial department who were to be laid off, if any, was that ever discussed between you?

A. I don't ever recall a specific discussion just as to an exact number that would be laid off. Mr. Smith's main interest, as I understand it, was the total amount of the payroll and also the question of whether we were keeping in line with prevailing practices on pay.

Q. Now, in your earlier discussion did Mr. Smith tell you anything specifically with reference to the total amount of the payroll and if so, what?

A. Well, I don't think that we ever discussed the specific total figure.

Q. Well, what did you discuss?

A. Mostly there was a discussion, whenever it

(Testimony of Warren W. Butler.)

came up, of whether or not the business would stand the size of the payroll that we had and I don't think we ever used actual figures. [211]

* * *

Q. (By Mr. Grodsky): As to approximately what date is the earliest conversation between you and Mr. Smith in which the question of wage increases was discussed?

A. I said I believed it was in May. Could I point this out?

Q. Yes.

A. That this isn't the first time we have had problems with relation to wages. I have worked with Mr. Smith for eighteen years and over that period of time we have had lots of financial crises at one time or another, and it is difficult to remember what was said at a particular time, because we have been over this problem many, many times.

Trial Examiner: But, had you some conversation in May?

The Witness: Yes.

Q. (By Mr. Grodsky): How long had it been before that time that you had had such similar conversations, if you can recall?

A. I think there was a little conversation about wages—it [213] didn't amount to much—around March.

Q. But this first significant conversation which eventually resulted in the wage increase in July, was in May?

(Testimony of Warren W. Butler.)

A. That is to the best of my recollection.

Trial Examiner: Now you are in May. Get to what was said and if you don't want it, get something else.

Mr. Grodsky: All right.

Q. (By Mr. Grodsky): Now, what did Mr. Smith say to you and what did you say to Mr. Smith?

A. That is awfully difficult to remember because we had several conversations.

Q. We are talking about the first one now.

A. I appreciate you are, but to remember what particular thing was said at each conversation is very difficult. I could tell you things that were said, but to say it was at this meeting rather than this meeting is awfully hard to do.

* * *

Q. (By Mr. Grodsky): Now, Mr. Butler, do you recall any [214] specific conversation relating to the question of pay raises before the date when the pay raises were granted? A. Yes.

Q. When did that conversation take place?

A. Well, that would be very difficult to say.

Q. Bearing in mind that the pay raises were given on July 18th, was it within a week of the pay raises, within two weeks, or what?

A. No, it was some time prior to that time.

Q. Well, will you give us your best estimate of when this particular conversation which you have in mind took place?

(Testimony of Warren W. Butler.)

A. I am not sure of my recollection, but if I were trying to place it, I would say it was probably in June.

Q. Who was present in the conversation?

A. Mr. Smith and myself.

Q. And what was said; do you recall, in this conversation?

A. As I remember, Mr. Smith said my wage scale wasn't enough, that it should be higher.

Q. And what did you say?

A. I said maybe he was right and that I would look into it and bring a report back to him as to what I thought it should be.

Q. (By Trial Examiner): While we are on the subject and before we get away from it, looking at Item No. 12, are these increases as near as you can say, for a given period, that is [215] bi-weekly, monthly or what?

For example, it is noted that Jack Cleland got a \$15.00 increase on July 18th; is that per week?

A. Yes.

Q. Is that true of all the other increases?

A. Yes, our pay is based on a weekly basis.

Q. It is true of all the other increases, that they were all weekly increases? A. Yes.

Q. (By Mr. Grodsky): Did you look into it and report back to Mr. Smith? A. Yes.

Q. Did you have a written report or was it just an oral report? A. A verbal report.

Q. When did you report back to Smith?

(Testimony of Warren W. Butler.)

A. Somewhere around the middle of July, I believe.

Q. Was it before or after the wage increase?

A. Oh, before.

Q. And will you tell us what you reported to him?

A. I reported to him that I thought he was correct, that we needed some wage increases.

Q. Did you discuss with him how much wage increases should be made to each person?

A. Yes, I think we sat and made out a list and discussed each [216] classification individually.

Q. (By Trial Examiner): While we are on the subject, what did you do to look into the question? What did that consist of?

A. Well, I inquired around as to what other papers were paying and that sort of thing.

Q. What other papers were those?

A. I made some inquiries about, I believe, the Herald Enterprise in Bellflower, the Norwalk Call in Norwalk, and one of the papers in Downey.

Q. Do you remember the name of the one in Downey?

A. No, at that time there were three different papers in Downey and I don't recall which one it was.

Q. You inquired, I take it, at one of them?

A. Yes.

Q. And any others?

A. I believe I looked up, as far as I could find, the record of what was being paid in Huntington

(Testimony of Warren W. Butler.)

Park and I remember discussing wages with one of the reporters of the Huntington Park papers, who came in to see me.

Q. (By Mr. Grodsky): What paper was that? The Signal?

A. Huntington Park Signal, I believe that is right.

Trial Examiner: Now, were all those comparable papers to your paper?

The Witness: Well, reasonably so. The Huntington Park [217] paper is a daily which is a different kind of operation from what we have. Our operation involves a group of papers more than a single paper.

Trial Examiner: Well, those papers on which the emphasis was on shopping information?

The Witness: That is a reasonable statement, yes.

Q. (By Mr. Grodsky): Do you know what the circulation is of the Herald Enterprise?

A. I don't believe that I have heard lately.

Q. Well, does it have a circulation that is comparable to your circulation?

A. As far as I know it isn't as large.

Q. It is a lot smaller, isn't it?

A. It is a smaller paper in size.

Q. And also in circulation, isn't it?

A. I would guess that it was. I do not have any authentic figures on it. [218]

* * *

Q. (By Mr. Grodsky): Do you know how many

(Testimony of Warren W. Butler.)

reporters are employed at the Herald Enterprise?

A. As of today I don't know.

Q. As of the time that you made your investigation in June or July?

A. There were at least three and those employees are known as "stringers."

Trial Examiner: Is that a casual or an occasional worker?

The Witness: They are paid on a space basis and every week they turn in their "string." That is where they get the name "stringers" from.

Q. (By Mr. Grodsky): Do you know how many employees there are on the Norwalk Call, that is, editorial employees?

A. I have heard numerous versions of that and I am not exactly certain of that. I do know there are at least three, but then as to whether there are any more, I am not positive of this.

Q. You don't recall now the name of the Downey paper which you made inquiry to, do you?

A. No, I am not entirely positive as I believe at that time there were three of them there.

Q. The Huntington Park Signal is a [220] daily, isn't it? A. Yes.

Q. And it has also got a Guild contract?

A. I think that is correct.

Q. In your inquiries, what did you find out about the wage scale at the Herald Enterprise?

A. I found out that it happened that they were a little bit higher than ours. That was a little bit difficult to figure because as I understand they pay

(Testimony of Warren W. Butler.)

on a monthly basis, whereas we pay on a weekly basis.

Trial Examiner: Well, broken down in terms of weekly basis, can you accurately estimate how much higher it was?

The Witness: I would say between \$5.00 and \$10.00 a week higher.

Q. (By Mr. Grodsky): Whom did you find this out from?

A. I believe I talked to a former employee if I remember correctly. I am not certain, however.

Trial Examiner: A former employee of yours or of the other newspaper?

The Witness: The thing I am not quite clear on—at one time I heard that the society editor on the Herald Enterprise was disengaged and I interviewed her and questioned her about wages. Now, whether that was at that time or not, I am not positive.

Q. (By Mr. Grodsky): What did you find out about the Norwalk Call with reference to their wages? [221]

A. Approximately the same, I would say.

Q. You mean they were paying about \$5.00 to \$10.00 per week more? A. That is right.

Q. And what did you find out about the Huntington Park Signal?

A. Well, the information there was a little bit uncertain. That is, in other words, as near as I could understand it from the way the reporter explained it to me, their rate for beginning people

(Testimony of Warren W. Butler.)

would be somewhat lower than ours, but their rate for the long time people would be a little bit higher.

Q. When you say "a little bit higher" what do you mean by that?

A. I am trying to remember the figures. Please do not say that this is the accurate figure, but I am just trying to give you a relationship. As I remember, with the exception of Mr. Cleland and Mr. Sheets, the highest of the other people were around \$80.00 per week, that is our people.

And the highest in Huntington Park was somewhere between \$90.00 and \$95.00. That is my recollection. It is something like that.

Q. Why did you except Mr. Cleland and Mr. Sheets?

A. Well, they have certain duties in coordinating material and for that reason we pay them a little more.

Q. Is your company a member of the California Newspaper Publishers' Association? [222]

A. I think that we are, but I don't know that of my own knowledge.

Q. Do you know whether the California Newspaper Publishers' Association supplies its members with information as to wages of reporters on various newspapers, its member papers?

A. I imagine they do.

Q. Do you know whether such information was available to you? I will just put it this way.

A. Well, the only thing that I can recall about that, I think I had discussed it at one time with

(Testimony of Warren W. Butler.)

Mr. Brewer something about what he had from that association and he said, "Well, I had a representative from the C.N.P.A. and that was approximately correct."

Q. (By Trial Examiner): You had already checked with the other newspapers or people connected with the other newspapers?

A. Yes, I had talked with the reporters about what the wage rate was.

Q. Before we leave the question of wage increases, and I am hoping that we may do so soon, I notice here in General Counsel's Exhibit No. 6 for item 7, that all but two individuals were increased on July 18th, 1954; some got the increases later, but they did get increases on July 18th.

Will you look at it, please, and will you tell me whether that substantially constituted those who were increased on July 18th of almost all of the non-supervisory employees of the Herald [223] American?

A. It included most of them as I recall. I remember specifically Mr. Desfor, and I said to Mr. Smith that I didn't know how he was going to do and I didn't know if he would stay with us and so I did not recommend an increase at that time.

Q. Anybody else?

A. It seems to me that there was somebody else, but I don't remember who it was.

Q. Then I take it your answer was it included all with the exception of one or two?

A. I believe that is right.

(Testimony of Warren W. Butler.)

Q. I have one more question. Marion Mattison, I see, had an increase on July 8th instead of July 18th.

A. July 8th?

Q. Yes, she was given a \$10.00 raise on July 8th.

A. That is something that I don't remember.

Q. All right. I notice that Helen Farlow was increased not on July 18th but October 24 and it may be that she wasn't employed there on July 18th.

A. Helen Farlow was out of our employment, I imagine, two or three months and she came back. She has been with us off and on for some sixteen years I think.

Q. Do I understand that your best recollection is that she wasn't with you on July 18th? [224]

A. Well, I could not be positive on that. I know that it was somewhere in the general vicinity of that time, but I do not recall the time.

* * *

Q. (By Mr. Grodsky): How long after the wage increases were given on July 18th did you determine that there—that it would be necessary to cut staff?

A. Well, I would not say—it is one of these things that [225] you cannot just shut down a curtain and say, "This is the time it happened." As I told you before, we had discussions at various different meetings.

Q. Were all these discussions after July 18th?

(Testimony of Warren W. Butler.)

A. I would guess that it was at least one week prior to that time, but I would not be positive.

Q. Which related to the cutting of staff?

A. You see, business began to drop off around the 1st of July, as I told you.

Q. Did you protest the idea of granting wage increases at a time that you were talking about the cutting of staff?

A. No, I don't believe that I did because by this time I had this information and I thought there was some justification for the feeling that there should be more money paid.

Mr. Grodsky: I will now have this marked General Counsel's Exhibit No. 9 for identification.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 9 for identification.)

Q. (By Mr. Grodsky): I show you what has been marked for identification as General Counsel's Exhibit No. 9 for identification and ask you if that is the kind of button which you saw Mr. Ross wearing on the day when you discharged him?

A. I believe that is the kind of a button that he showed me at the time.

Trial Examiner: I would suggest that you affix that [226] firmly to a piece of paper and tab it "General Counsel's Exhibit No. 9."

Mr. Grodsky: I will do that, and I will offer it at this time.

Trial Examiner: Any objection?

(Testimony of Warren W. Butler.)

Mr. Kaufman: What, to a union button?

Trial Examiner: To the admission of the button? It will be received.

(The document heretofore marked General Counsel's Exhibit No. 9 for identification was received in evidence.)

Q. (By Mr. Grodsky): Now you mentioned before in your testimony with reference to the reporters that you had looked to the figure of the Huntington Park Signal for their older employees.

How many employees do you have in your organization who were more than five years in service with you? A. I really don't know that.

Q. Well, Mr. Cleland was more than five years, wasn't he? A. Very definitely.

Q. Mr. Sheets was more than five years, wasn't he, or approximately that?

A. Yes, I believe so.

Q. And on the occasions when Helen Farlow worked there, she was there over five years considering everything?

A. Oh, yes, considering everything, she had worked longer [227] there than anybody else.

Q. Can you think of anybody else apart from those three, who have been there longer than five years?

A. I am not sure of the figures but if I were guessing I would say that some of them had been there pretty close to that.

Q. Now, did you know that the Guild contract

(Testimony of Warren W. Butler.)

by Huntington Park Signal has graduated pay scales by the number of years of employment?

A. I believe that gentleman told me, but the thing I am not clear on is whether that goes to the employee's employment with that newspaper or whether it is for the number of years of experience in the business.

Q. Now, before the wage increases were given, what was the wage of—well, let us take Mr. Ross, if you remember his wage, since he is no longer an employee?

A. I don't think I can remember that.

Q. Do you remember the wage rate of any employee? A. Not without consulting records.

Q. Do you have any of the records here?

A. Nothing other than what I have seen on the sheet. [228]

* * *

Q. (By Mr. Grodsky): Now, after Mr. Ross was discharged—strike that. When you hired Earl Griswold, did you have him in mind for the Lake-wood job?

A. As a matter of fact, I did not hire Mr. Griswold.

Q. Do you know whether he was hired with that specific job in mind?

A. I would imagine so because he had been working for a competing paper in that capacity.

* * *

(Testimony of Warren W. Butler.)

Cross-Examination

By Mr. Kaufman:

Q. Mr. Butler, did you on any occasion or any one under your instructions, discharge Sol London, Raymond J. Ross, Doris Hickey or Doris Farley because they were engaged in concerted activities with other employees for [229] the purposes of collective bargaining and other mutual aid and protection?

Mr. Grodsky: I will object to that question, as I think that——

Trial Examiner: I will overrule it.

The Witness: The answer is “no” with this stipulation, that I did not dismiss all of them.

Q. (By Mr. Kaufman): The ones that you knew about or dismissed, your answer would still be “no”? A. That is right.

Q. Do you know if anybody else in the organization fired any one because of union activities?

A. Not to my knowledge.

Q. Did you on July 12th or any other date, question employees as to whether they had joined the union for the purposes of finding out, so that you could fire them? A. No.

Q. Did you ever make a statement on July 17th or any other date, that Mr. London had been discharged for attempting to organize for the Guild?

A. No.

(Testimony of Warren W. Butler.)

Q. Was Mr. London discharged specifically for any attempt to organize for the Guild?

A. No.

Q. Did you have Lou Murray attempt a surveillance of a union [230] meeting on or about July 17th, 1954, or any other date?

A. Mr. Murray isn't under my direction and I did not.

Q. Were any wage increases granted by you or under your direction or with your consent as a means of combating unionism on or about July 17th, 1954, or thereafter?

A. No, I believe I explained the basis for the wage increases.

Q. Now, Mr. Butler, did you have a conversation with Mr. Fleener relative to the discharge of Mr. London?

A. It was mainly a one-sided conversation on the part of Mr. Fleener.

Q. Did you have such a conversation?

A. Yes.

Q. As best as you can remember it, would you tell me about that conversation?

Mr. Grodsky: I object, there is no foundation as to date.

Trial Examiner: Well, we know what counsel is getting at but it would be helpful if you placed the date because if you don't ask him, I will.

You can have an answer to this question and I will overrule the objection.

Mr. Kaufman: Right.

(Testimony of Warren W. Butler.)

The Witness: I am not quite certain as to the question.

Q. (By Mr. Kaufman): You will remember that Mr. Fleener said he had a conversation with you an hour or two after Mr. [231] London was fired?

A. Mr. Fleener approached me and asked me about it.

Q. Yes, do you remember that incident?

A. Yes.

Q. Would you tell me your version of the Fleener conversation or whatever you call it?

A. He asked me if Mr. London had been dismissed.

Q. Yes.

A. And then he said something about, "Did the union have anything to do with it?" or something of that sort, and I said, "Well, no, not as to the dismissal."

"Well," he said, "Is Sol mixed up with the union" and I said, "I don't know anything about it other than I had some reports that he was soliciting membership in the office during the time that he should have been working."

Q. Now, sir, isn't it a fact that after the discharges—strike that. There were other people fired at or about the same time that Doris Hickey and—I mean Gloria Hickey and Doris Farley were fired; that is around the middle of August; isn't that correct?

(Testimony of Warren W. Butler.)

Mr. Grodsky: I object. There is an objection pending.

Trial Examiner: You are objecting?

Mr. Grodsky: Yes.

Trial Examiner: Well, for one thing, you, yourself, brought that out and counsel would be entitled to address [232] himself to it for that reason if no other.

You brought out, for example, or it was brought out in direct examination that William Edmond was terminated on August 18th.

Mr. Grodsky: Yes. Well, his question is too vague because he just specified around the middle of August.

Trial Examiner: Then if it is too vague to amount to anything, he may be damaging his case. I will take the testimony.

Mr. Grodsky: All right.

The Witness: It may be too late for the witness to answer.

Mr. Kaufman: Well, I will rephrase it.

The Witness: I wish you would.

Q. (By Mr. Kaufman): It has been alleged that on or about August 18th, the newspapers fired, or Mr. Smith fired, some employees for union activities.

Now I believe you testified that they were not discharged for union activities as of that date?

A. That is right.

Q. Now, isn't it a fact that other employees on or about August 18th were also discharged?

(Testimony of Warren W. Butler.)

A. It was my understanding that there were. In this conversation with Mr. Smith, about having to cut down the payroll, he said it did not pertain only to me but to other departments as well, that they were having the same thing to [233] do.

Q. You know don't you, that other departments did fire employees? A. Oh, yes.

Q. And on or about the 18th, the same date?

A. As I recall it, yes. I didn't pay a great deal of attention to the other people because I was only interested in my own staff.

Q. And you operated thereafter with actually less personnel in numbers than you had before; is that a correct statement? A. That is right.

Trial Examiner: Well, for how long or permanently or what?

The Witness: I don't think I have of this date, I have as many as I had then, if my memory serves me correctly.

Trial Examiner: Well, before we get away from this subject, I am a little bit vague about who else was dismissed, in other words, and perhaps this witness can identify for me on General Counsel's Exhibit No. 6 who besides Sol London, Helen Farley, Raymond Ross, and perhaps one other, was dismissed about August 17th?

The Witness: Well, now——'

Mr. Kaufman: Well, see, these people are editorial.

The Witness: The other people it would be hearsay with me. [234]

(Testimony of Warren W. Butler.)

Trial Examiner: That is what is troubling me.

The Witness: They weren't in my department and I wasn't directly concerned with them.

Trial Examiner: That is what is troubling me because this General Counsel's Exhibit No. 6 isn't confined to the editorial people, namely, "Name and date of termination of all classified advertising solicitors terminated after August 1, 1954," under which the name of only one appears and she is alleged to be unlawfully discharged.

What is troubling me, in other words, this witness has testified to some hearsay testimony which doesn't appear to correspond to the document the respondent made up.

Mr. Kaufman: Well, I think it does because we have other classifications, 9, 10, and 11, PBX operators and cashiers terminated.

Trial Examiner: As I say, you have one.

Mr. Kaufman: Yes.

Trial Examiner: Helen Larson and that is the reason I gave this to the witness so that he can use it to refresh his memory perhaps as to what he had heard and from whom and so on.

Well, in any event, thus far I have some hearsay from this witness on some people and I cannot base any finding on it.

Mr. Kaufman: I appreciate that but you also have more than hearsay, you have an exhibit. [235]

Trial Examiner: I may have an exhibit, I must agree, but I am now referring to this witness' testimony.

(Testimony of Warren W. Butler.)

Mr. Kaufman: All right, I understand that.

Q. (By Mr. Kaufman): You made the decision did you, to fire Mr. Ross? A. That is correct.

Q. You were merely told, I believe your testimony was, to fire someone by Mr. Smith?

A. Well, we had to cut down the payroll.

Q. But that was your decision and it wasn't based on any union activities whatsoever; is that correct? A. That is right.

Mr. Kaufman: I have no further questions.

Trial Examiner: Anything else, Mr. Grodsky?

Mr. Grodsky: Yes.

Redirect Examination

By Mr. Grodsky:

Q. You told us pretty much of what Mr. Fleener told you, but I failed to get what you told him. Now, when Mr. Fleener said he heard that Sol London was discharged, what did you tell him?

A. I told him that it was correct.

Q. Then he asked you whether it was for union activities? A. Yes, as I recall.

Q. And what did you say to him?

A. I said, "No, it wasn't for union activities."

Q. All right. Did you say anything further?

A. Then he asked me another question and said, "Wasn't he active in the union"?

Q. Yes.

A. And I made the statement, "Well, the only thing I know is that I have heard reports that he

(Testimony of Warren W. Butler.)

was soliciting membership in the office during hours that he should have been performing his work.”

Trial Examiner: Well, in words or in substance, did you tell him that that was a reason why he was discharged?

The Witness: No, I did not make that statement. He could possibly have assumed that.

Trial Examiner: No, do not tell us what he assumed. I only want to know what you did.

The Witness: I did not tell him anything.

Trial Examiner: Go ahead, anything else?

Mr. Grodsky: Nothing more.

Trial Examiner: I have only one question.

Q. (By Trial Examiner): If I understand the testimony here correctly, Mr. Ross' work week, in the week he was discharged, was scheduled to expire the following Saturday; is that correct?

A. That is right.

Q. I take notice that August 17th was on Tuesday.

A. That is right. [237]

Q. Now, can you tell me or can you account for the fact that Mr. Ross was paid for the balance of that week, that work week, plus some more?

You testified he was given two weeks' pay or thereabouts. Can you account for the fact that he was paid for the balance of the work week, why he was paid for the balance of that work week?

A. He raised the question, "Do you want me to quit just now or do you want me to finish the paper" and I said, "Well, do just what you think."

Q. Well, that is my point. Can you account for

(Testimony of Warren W. Butler.)

the fact that you did not require him to work the rest of the week?

A. I do not believe I felt it was too material one way or another. He raised the question himself in the first place and I did not want to have any argument with him. I said, "Well, if you want to quit now, that is perfectly all right with me."

Trial Examiner: All right. Anything else of this witness?

Mr. Grodsky: I have one more question.

Q. (By Mr. Grodsky): Is Wednesday the make-up day?

A. Well, actually we start making up papers some time on Tuesday afternoon usually and it continues on until late on Wednesday night.

Q. And your experienced reporters are very necessary on the [238] job for the make-up; isn't that correct?

A. Well, not necessarily. You see, Mr. Sheets for example, was very familiar with Lakewood and the reason that I did not press Mr. Ross to stay the following day was because I knew that Mr. Sheets could make-up for him any way, so that it would not make too much material difference.

Q. When Maxine Galt quit on the Tuesday, you felt differently about it?

A. Well, then I did not have anybody who was familiar with what we did in our "string" service, who would know the material sufficiently well to do

(Testimony of Warren W. Butler.)

a good job of make-up. I did not dismiss her as of Tuesday.

I think I notified her on Monday that she would be through at the end of the week. She left of her own volition on Tuesday afternoon.

Q. (By Trial Examiner): Well, you know who finished up Mr. Ross' work. I got the impression that there was some work he did not complete.

A. I don't think there was. As a matter of fact, if I remember correctly, Mr. Ross was in the office the following morning.

Q. On Wednesday? A. Yes.

Q. Working?

A. I don't think he was working. I think he came in to [239] advise Mr. Sheets about some things that had to be done, about where they should be.

Q. Well, do you in truth and in fact know that anybody else finished up some work for him that was necessary as a part of the make-up?

A. Well, they must have because to my knowledge he was only in the office a few minutes the following morning and the make-up would take one or two hours.

Q. And do you know who did do that?

A. Mr. Sheets was at the position where the make-up would be done. He was in the proper position to do so.

* * *

DORIS FARLEY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

* * *

By Mr. Grodsky:

Q. What is your name? [240]

A. Doris Farley.

Q. And your address?

A. 67 West Sixty-first Street, Long Beach.

Mr. Kaufman: Doris Connelly?

The Witness: Doris Farley.

Q. (By Mr. Grodsky): When were you employed by the Herald American Company?

A. Mr. Brewer.

Q. When? A. My first day was June 28th.

Q. Of 1954? A. Yes.

Q. In what capacity were you employed?

A. PBX and cashier.

Q. Do you know a Mr. Lugoff who is with the company? A. Yes.

Q. Do you know what his job is?

A. Classified manager, I believe.

Q. Did you ever hear him make any statement with reference to the Guild?

Mr. Kaufman: Just a moment, please.

Trial Examiner: Do not answer the question until I tell you.

The Witness: O.K.

(Testimony of Doris Farley.)

Mr. Kaufman: Your Honor, would you have the reporter read [241] back the question to me, please?

Trial Examiner: Sure.

(Question read.)

Mr. Kaufman: Continue.

Trial Examiner: Go ahead, answer.

The Witness: Not to me he didn't but I heard him to Gloria Hickey.

Trial Examiner: The question is, "Did you hear it"?

The Witness: Yes, part of it.

Q. (By Mr. Grodsky): When did you hear him make the statement that you have in mind?

A. I heard one the first week I went to work there. I don't know what day it was.

Mr. Kaufman: What date was it?

The Witness: 28th June, I started there and it was in the following week.

Q. (By Mr. Grodsky): Now, to whom was Mr. Lugoff talking to? A. Gloria Hickey.

Q. Where were you employed?

A. Half way across the office from her.

Q. No, in what office were you employed?

A. Bellflower.

Q. Where did this conversation between Gloria Hickey and Mr. Lugoff take place?

A. By her desk in the Bellflower office. [242]

Q. And where were you standing or sitting when you heard the conversation?

A. I was putting the day before's issue of the

(Testimony of Doris Farley.)

paper on the file. They have a place for it there.

Q. And what did you hear Mr. Lugoff say?

A. I don't remember his exact words, but he asked her did she know anything about it, and who was involved.

Q. Who said did she have anything to do with it?

A. I didn't pay too much attention to that conversation because I wasn't interested.

Q. Did you hear anything further in the same conversation then?

A. I didn't hear her answer because I had to go to the phone. He said he was glad she wasn't, because Colonel Smith was going to fire, if he did not find out who it was, he was going to fire the whole God-damned department.

Trial Examiner: Just search your recollection and tell us as nearly as you can remember.

The Witness: The only exact words I heard was that he would fire the whole God-damned department.

Q. (By Mr. Grodsky): Who?

A. If he couldn't find out who was involved.

Q. Who? A. The people in the Guild.

Q. Did he say "in the Guild"? [243]

A. No, I just remember that one phrase. It stuck with me.

Q. I show you General Counsel's Exhibit No. 9 which is a union button and ask you whether you, at any time during your employment, wore a similar button? A. August 17th.

(Testimony of Doris Farley.)

Q. And was that as a result of a prearrangement? A. Yes, of the night before.

Q. What had happened the night before?

A. We had a union meeting the night before at Gloria's home in Norwalk.

* * *

Q. (By Mr. Grodsky): Did anybody else in your office wear a union button? A. Yes.

Q. Who? A. Gloria Hickey and myself.

Q. You were the only two? A. Yes.

Q. Did Gloria Hickey wear a button on any date before 17th August?

A. No, I don't believe so. I don't think so.

Trial Examiner: Did you? [244]

The Witness: No, I started to the day before and I decided I would not.

Trial Examiner: You started to on August 16th?

The Witness: Yes.

Q. (By Mr. Grodsky): Where did you wear your union button and by "where" I mean on what part of your clothing? A. On my belt.

Q. Was it exposed on your belt? A. Yes.

Q. When were you discharged?

A. The morning of August 18th.

Q. Now, beginning with the morning of August 18th—oh, strike that.

Do you know whether Gloria Hickey was discharged—

A. She was discharged the same morning as I was.

(Testimony of Doris Farley.)

Q. Do you know that? A. Yes.

Q. Were you present then? A. Yes.

Q. Was she discharged before you or after?

A. Before.

Q. At what time of the morning was Gloria Hickey discharged?

A. Between fifteen until 9:00 and 9:00.

Q. By whom was she discharged?

A. Mr. Lugoff. [245]

Q. Was there any conversation between Mr. Lugoff and Gloria Hickey?

A. I didn't hear the first of the conversation because I was across the office.

Q. Did you hear part of the conversation?

A. Yes.

Q. Will you tell us what you heard?

A. He was telling Gloria that he was very satisfied with her work and he liked her very much and he was sorry he had to let her go but it was for economic measures.

She told him that it wasn't and oh, I don't remember, let me see——

Trial Examiner: Take your time.

The Witness: I think she called the Guild headquarters and charged it to her phone and told Mr. Lugoff she was going up there as soon as she left the office.

He told her it would not do her any good because he had been in the same position—I forget how many years ago—and nothing had come from that.

(Testimony of Doris Farley.)

Q. (By Mr. Grodsky): Did you have any conversation with Mr. Lugoff?

A. Yes, I asked him if he was going to fire me, too.

Q. What did he say?

A. He said he wasn't my boss.

Q. What happened then? [246]

A. He made a telephone call and I had to go to the switchboard to give him a line, so I did not hear any of the conversation until he told somebody, "Hurry on down. I am here waiting for you." I don't know who the person was.

Q. What happened next with reference to your discharge?

A. I don't believe it was more than fifteen minutes later that Mr. Murray arrived.

Q. What relationship did he bear to you; was he your boss?

A. I don't believe he was. I don't know.

Q. After he arrived what, if anything, did he say or do?

A. Well, we exchanged "Good mornings" and I asked him did he have any check for me, and he said something, he said he did have it and he gave it to me.

Then he asked me to turn over the keys of the petty cash box to him.

Q. And you did that? A. Yes.

Q. Did you have any conversation with him?

A. Not at that time. I closed the board and

(Testimony of Doris Farley.)

showed another girl how to put the lines so that she could take it herself.

I went up and I was talking to him, then I said, "I don't think it is for economic measures that you are firing me for."

Trial Examiner: This is when you asked him for your check? [247]

The Witness: Yes. He said, "This is for economic measures." I said, "I do not believe it is for that." And he said, "If economic measures doesn't hold up, we will go into the efficiency of your work."

Q. (By Mr. Grodsky): During the time of your employment were you ever criticized by any representative of the management with reference to the performance of your duty? A. No.

Mr. Grodsky: I have no further questions.

Cross-Examination

By Mr. Kaufman:

Q. Is it Mrs. Farley? A. Yes.

Q. Is there a Mr. Farley?

A. Yes, there is.

Q. You live in Compton? A. Yes.

Q. How long had you worked for the paper?

A. I started on 28th June up until the morning of August 18th.

Q. So that would be almost two months; is that right? A. Yes.

Q. As I compute it, right? A. Yes.

(Testimony of Doris Farley.)

Q. I suppose you would be called a rather new employee; is that correct? [248] A. Yes.

Q. And on this first conversation that you overheard, you have tried to be very fair and I appreciate that too, and I believe you said that you were quite a distance away; is that right?

A. Not at the time I heard that phrase, no.

Q. When they first started to talk, and I mean by that Gloria Hickey and Mr. Lugoff, how far were you from them?

A. About as far from you to me.

Q. Were they talking as loudly as I am?

A. A little louder.

Trial Examiner: I would estimate that that is sixteen to twenty feet, the distance between them. Is that agreed?

Mr. Kaufman: No, it isn't. I would say that it would be closer to twelve to fifteen feet.

Trial Examiner: That the witness is from you?

Mr. Kaufman: Yes.

Trial Examiner: All right, I will accept your estimate.

Mr. Kaufman: All right, thank you.

Q. (By Mr. Kaufman): So you would say about twelve to fifteen feet way?

A. I don't know about that.

Q. Could you hear very clearly? A. Yes.

Q. Was it noisy there? [249] A. No.

Q. Very quiet like in here now?

A. Well, not as quiet as this.

Q. Could you hear them speaking very clearly?

(Testimony of Doris Farley.)

A. I didn't hear what Gloria said.

Q. Now, just tell me exactly again how much of the conversation, if any, you did hear.

A. I didn't hear Gloria say anything.

Q. Fine. A. I was going back and forth.

Q. She was talking but you didn't hear her, is that it?

A. I did not say that. I didn't pay any attention to her because I wasn't interested.

Q. You did hear a few phrases of Mr. Lugoff's?

A. Yes.

Q. Will you explain to me the first conversation that you had with Mr. Lugoff?

A. I was over there on that side of the office (indicating).

Q. "Over there" means nothing to me. You did hear some of the conversation, is that right, Mrs. Farley? A. Yes.

Q. I want the first words as best as you remember them, that you heard. I don't want to know where you were or anything else. I only want the first words you heard.

A. This is the best that I can recall. He said, "Gloria, [250] do you know anything about this Guild business?"

Q. At that time, where were you in distance from Mr. Lugoff and Gloria Hickey?

A. I was closer at that time because I had just been introduced to him.

Q. How close?

(Testimony of Doris Farley.)

A. This close I think (indicating). We shook hands.

Trial Examiner: Do you mean to the reporter?

The Witness: Yes.

Trial Examiner: Is that right?

The Witness: Yes.

Trial Examiner: Well, that is about a yard.

Q. (By Mr. Kaufman): Then he said, "Do you have anything to do with the Guild business?" I think. A. Yes.

Q. What did she say to that?

A. "Why, Mr. Lugoff * * *" and at that time I left.

Q. And actually—I know you were not thinking then—but actually you did hear Miss Hickey say something, didn't you? A. I suppose so.

Q. But a moment ago you had told me you heard her say nothing.

A. She didn't say "yes" or "no."

Q. But a moment ago you said you did not hear her say [251] anything; isn't that a correct statement of your testimony?

Mr. Grodsky: No, she said she didn't hear her say any words.

Q. (By Mr. Kaufman): Am I correct in stating that originally you were in error and that you now were close to the two parties talking at one time and you heard her answer?

Mr. Grodsky: I object to the question on the ground that it starts out with a conclusion, "Originally you were in error."

(Testimony of Doris Farley.)

Trial Examiner: All that she has to do here is to say whether counsel's statement is correct. That is all you have to do.

Mr. Grodsky: I will object to it further on the grounds that it is incompetent.

Trial Examiner: All right, I will overrule it.

I am going to have the question read to you. You listen to it and give your best answer.

(Question read.)

The Witness: Well, I am going to have to explain this. When he asked me the question, while—well, I thought it was about what he said that Colonel Smith had said——

Trial Examiner: You mean what you heard later on; what you testified you heard later on?

The Witness: Yes.

Trial Examiner: Go ahead. [252]

Q. (By Mr. Kaufman): I want to be fair to you but I want you to be fair to me, if you can. If you don't understand my questions, will you stop me, please.

Let me start again. The first thing that you heard was a conversation between Mr. Lugoff and Miss Hickey; is that correct?

A. That was the first that I remembered anything about. I suppose there were other words said that I do not remember.

Trial Examiner: Well, you do not have to guess at anything else that was said.

(Testimony of Doris Farley.)

The Witness: That was the first phrase that had anything to do with the Guild that I had heard.

Trial Examiner: Go ahead, sir.

Q. (By Mr. Kaufman): You were present that day and remember part of a conversation; is that a correct statement? A. Yes.

Q. Now the first thing that you heard that you remember you can place, when you were very close to both parties was, to wit, Miss Hickey and Mr. Lugoff talking? A. Yes.

Q. Now, please repeat that conversation.

Mr. Grodsky: I object to it. It has been asked and answered.

Mr. Kaufman: I don't think so because I am attempting to go through this in an orderly manner because she said she was [253] confused before.

Trial Examiner: She has already testified to it on your interrogation.

Mr. Kaufman: But she then said she was confused.

* * *

Q. (By Mr. Kaufman): The conversation is what I am interested in, the one part that you heard when you were standing a few feet away from the two parties. A. All of it?

Q. Yes.

A. Mr. Lugoff said he was very glad to know me and that he hoped I would be happy here. And I said, "Thank you." He then turned to Gloria and said, "Have you had anything to do [254] with the Guild activities that have been going on around

(Testimony of Doris Farley.)

here?" And she said, "Why, Mr. Lugoff * * *" And I went to answer the switchboard and came back later.

Q. How much later did you come back?

A. About one and a half minutes.

Q. What did you do during that minute and a half?

A. I said "Good morning, Herald American," and gave the line that they asked.

Q. You were at the switchboard? A. Yes.

Q. When you came back, how far away from Doris Hickey and Lugoff were you?

A. From me to you.

Q. At that time were you doing any work?

A. I was putting a newspaper on a file.

Q. At the same time you were listening whether inadvertently or otherwise, to a conversation between Mr. Lugoff and Miss Hickey? A. Yes.

Q. And were you trying to hear what they said?

A. No.

Q. Whatever you did hear was inadvertent?

A. I can say that I may have heard something but it didn't stick with me because at that time I wasn't interested.

Q. Would it be fair to say you were paying very little [255] attention to the conversation?

A. I suppose.

Q. Do you remember?

A. I remember the few phrases.

Q. What is the phrase you heard the second time?

(Testimony of Doris Farley.)

Q. Do you know a party by the name of Fitzgerald? A. No.

Q. It is Mrs. Fitzgerald; does that refresh your memory? A. Marjory?

Trial Examiner: Well, he knows somebody called [256] "Fitzgerald" and you know somebody called "Marjory." That wasn't Mr. Kaufman's question. Mr. Kaufman's was, "Do you know anybody by the name of Fitzgerald?"

The Witness: I believe that is her last name.

Q. (By Mr. Kaufman): Did she wear a union button? A. Oh, yes. [257]

* * *

GLORIA HICKEY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Grodsky:

Q. Will you state your name and address, please?

A. 11432 McLauren Avenue, Norwalk.

Q. Will you speak up so that everybody will hear you? A. Yes.

Mr. Kaufman: I didn't get her address.

The Witness: 11432 McLauren Avenue, Norwalk.

(Testimony of Gloria Hickey.)

Q. (By Mr. Grodsky): When were you employed by the Herald American?

A. March, 1954.

Q. And in what capacity?

A. Classified advertising sales.

Q. And you worked there until you were discharged on August 18th?

A. In the morning, yes.

Q. Of 1954? A. Yes. [264]

Q. During your period of employment, did you have any conversation with any supervisor with reference to the Guild?

A. Yes, Mr. Leonard Lugoff, my immediate boss.

Q. Where did this conversation take place?

A. At the Bellflower office of the Herald American newspaper.

Q. And that is the office in which you were employed? A. Yes.

Q. When did this conversation take place, to the best of your recollection?

A. I believe it was in July. I don't recall the exact date. I didn't feel at the time I would have any reason to remember the exact date.

* * *

Q. (By Mr. Grodsky): Who else was present in the Bellflower [265] office at the time of your conversation, within your recollection?

A. Doris Farley was present. I believe Dorothy Bush was present, but I cannot say definitely.

Q. What did Mr. Lugoff say to you with refer-

(Testimony of Gloria Hickey.)

ence to the Guild, and what, if anything, did you say to him? Give us the entire conversation.

Mr. Kaufman: Would we place the date of this?

Trial Examiner: Yes, it was an estimated date. It was some time in July but the witness said she didn't know the exact date.

Mr. Kaufman: All right.

The Witness: Mr. Lugoff came into the office. Doris Farley and he and I were talking. He asked me if I had any connection with the Guild and I told him I did not.

He said he certainly hoped that I did not because it would mean immediate dismissal, for anyone else connected with the Guild activities.

He said that he knew there were Guild activities going on, possibly centered in the North Long Beach and Bellflower offices and that Colonel Smith had told him to fire his whole God-damned classified department if he had to, to find out who was responsible for it and to get rid of all of them if he had to.

Q. (By Mr. Grodsky): Now, will you describe the events [266] leading up to your termination?

A. On the afternoon of August 17th, I telephoned Mr. Lugoff at the Compton office to turn in my line count as was customary. This was about 6:00 o'clock in the evening. And he asked me to wait as he wanted to come out and talk to me.

I told him I was real sorry but that I had things to do and I couldn't wait for him but that I would come into the Compton office and talk to him later, and

(Testimony of Gloria Hickey.)

he said, "No," that he would see me the next morning.

Q. Did he see you the next morning?

A. Yes, on the morning of the 18th when I went to work around 8:30, Mr. Lugoff came in approximately fifteen minutes later.

Q. Will you describe what took place at that time? [267]

* * *

The Witness: He came into the office at approximately 8:45 and I told him, "Good morning," and asked him if he had my checks and he said "Yes," and handed them to me. And I said, "Well, you are firing me because I am wearing a Guild button," which I had on.

And he said, "Well, I am very sorry to have to let you go but Colonel Smith ordered it." And Doris Farley came over and said, "I am wearing one, too, are you going to give me my checks?" And he said, "I am not your boss."

Then he sat down at one of the desks behind mine and made a phone call and he said, "I am asking for Lou Murray." And then he said——

Mr. Kaufman: Now, just a minute. I submit that a conversation between Mr. Lugoff and somebody unknown over the telephone is objectionable to as there is not sufficient foundation laid and it is hearsay.

Trial Examiner: If that is the ground of your objection, I will overrule it. [268]

(Testimony of Gloria Hickey.)

Mr. Kaufman: Furthermore, that there is no—no, I have nothing further to say.

Trial Examiner: I might add that this doesn't necessarily go to the question as to whether or not he actually spoke to Mr. Murray. She is testifying to what she heard.

Mr. Kaufman: All right.

Trial Examiner: Continue, please.

The Witness: I heard him say, "Come over. I am waiting for you." And shortly after that, Mr. Murray arrived in the office.

Trial Examiner: Well, I think you have now gone beyond the question which was asked of you.

Q. (By Mr. Grodsky): Now, were you present when Doris Farley was discharged?

A. Yes, I was.

Q. About how long after your discharge did that discharge take place?

A. I would say within twenty minutes.

Q. Who discharged her?

A. Mr. Lou Murray.

Q. Did you overhear the conversation between Mr. Murray and Mrs. Farley? A. I did.

Q. Will you tell us that conversation?

A. Mr. Murray came into the office and gave her her checks. [269] And she said, "It is because I am wearing a Guild button, isn't it?" or words to that effect and Mr. Murray refused to answer.

Q. Did he say something?

A. Well, not at that particular moment. He told her to shut the switchboard off and he started

(Testimony of Gloria Hickey.)

counting the cash in the cash box, and we continued talking to him.

And she said, "My work is satisfactory, isn't it?" He said, "You are being discharged because of an economy measure. We may have to go into it later."

Q. Now, you testified that you and Doris Farley were wearing the union button on the day of your discharge, which was on the 18th.

Now, had you worn the union button at any other time? A. We wore it all day on the 17th.

Q. Did you wear it before the 17th?

A. I wore mine on the afternoon of the 16th.

Q. But before the 16th, did you or Doris Farley ever wear your union buttons?

A. We did not even have one before that.

Q. Now, when you received your checks, do you recall what date the checks were dated?

A. August 17th, 1954. [270]

* * *

Cross-Examination

By Mr. Kaufman:

Q. It is Mrs. Hickey, is it not?

A. That is correct.

Q. Is there a Mr. Hickey? A. Yes. [271]

* * *

Q. Now, Mrs. Hickey, when you had this alleged discussion with Mr. Lugoff, I believe you stated it was in July? A. Yes.

Q. You had been working there for some time;

(Testimony of Gloria Hickey.)

is that correct? A. Yes.

Q. And where did this discussion take place?

A. In the Bellflower office of the Herald American.

Q. What part of the office?

A. I would say behind the counter in the front of the office.

Q. Do you recollect that that is where it was?

A. Yes, it was around the counter at the front of the office.

Q. You do remember?

A. Yes. It wasn't at my desk.

Q. Were you standing during the conversation?

A. Yes, I was.

Q. Where was Mrs. Farley?

A. She was standing by the switchboard.

Q. How far is that from where you were talking?

A. I don't know. I would say about as far as to Mr. Grodsky [275] but I don't know how far that would be.

Q. Would you say about eight feet?

* * *

Q. (By Mr. Kaufman): And where was Dorothy Bush?

A. I said I wasn't sure if she was in the office. I think she was in the office. Dorothy was usually in when Mr. Lugoff came around.

Q. Do you remember whether you saw her or not? A. Not definitely.

Q. So then you could not place where she was, of course? A. No.

(Testimony of Gloria Hickey.)

Q. Now, who opened the conversation, Mr. Lugoff or yourself?

A. I don't remember exactly.

Q. Well, do you recall any parts of the conversation?

A. Well, we always discussed classified advertising.

Q. I am not talking about what you always discussed. You did have a particular conversation that morning?

A. Relating to the Guild?

Q. Was it in the morning?

A. Yes, around 11:00. [276]

Q. About 11:00? A. Yes.

Q. And you do remember the time?

A. Yes.

Q. Can you remember any other parts of the conversation or anything else that took place in that conversation?

A. Well, it has been some time. I would not remember all the conversation because I did not feel it would be necessary to remember it.

Trial Examiner: Give us your best recollection. Your explanation is unnecessary. If you don't remember, just say so.

The Witness: I had introduced Mr. Lugoff to Doris Farley. We were talking and he asked me if I had any connection with the Guild, that there were rumors going around and he wanted to know if I knew anything about it. And I said "no."

And then he said he certainly hoped so because it would mean immediate dismissal for anyone who

(Testimony of Gloria Hickey.)

was connected with the Guild. That he had heard that it had started in the North Long Beach office and that somebody in the classified ad picked up the ball and he had heard there was a classified ad girl in the Bellflower office, or words to that effect.

Q. (By Mr. Kaufman): How long were you there talking to him? A. I don't know.

Q. Well, it was several minutes, wasn't it? [277]

A. Oh, yes.

Q. Now, can you give me anything else? You have virtually repeated the conversation elicited by General Counsel but do you have—well, you did have other conversations there, did you not? [278]

* * *

Q. At last I believe I understand. Now, in this conversation were you told by Mr. Lugoff that you were fired for union activities? A. No.

Q. Did he give you a reason for discharging you?

A. He said that Colonel Smith had ordered it because of an economy cutback.

Q. What was your answer to that, if any?

A. When he first gave me my checks, I said, "I am being discharged because I am wearing this button."

Q. What was his answer to that, if any, after he told you that Colonel Smith had fired you and others on an economy move?

Trial Examiner: Not what you told him before but—

The Witness: I told him I did not believe it, that, after all, I wasn't that stupid.

(Testimony of Gloria Hickey.)

Q. (By Mr. Kaufman): What did he say to that, if anything?

A. He said he was sorry he had to do it, that my work had [287] been satisfactory as far as he was concerned. There wasn't any personal feeling but he was sorry if I was mixed up in the Guild because that they would not be able to do anything for me.

I told him that I was under the impression that they could not fire you because of other Guild activities and he said he had a situation like that some fifteen years ago and he named the Hollywood News, and he said, nothing ever came of it. So he said, "They can't do anything for you." He was sorry I had got entangled with it.

Q. Go ahead, what else?

Trial Examiner: Was there anything else?

The Witness: No, not that I remember right now.

Q. (By Mr. Kaufman): And I take it that Mrs. Farley was present during this conversation?

A. I would say that Mrs. Farley could hear the conversation. This close I believe that anybody could hear it.

Q. She was present, is that correct?

A. Yes.

Q. And didn't you at one time on the witness stand say the three of you were together?

A. Yes, we were together.

Q. So there would be no question but that you were together?

(Testimony of Gloria Hickey.)

A. That is right and you could certainly overhear the conversation. [288]

Q. How close was Mrs. Farley standing to you?

A. Let us say approximately eight feet and establish it at that because I would say that that was about right. I don't know, however.

Trial Examiner: All right, you have answered it.

Q. (By Mr. Kaufman): Did you ever file a request with the Department of Employment of any kind? A. Yes, for unemployment insurance.

Q. Yes. A. Yes, I did.

Q. And in that request besides your name and address, they ask you the reasons why you left your last employer; is that correct? A. Yes.

Q. Did you fill in that line at all in your request? A. Yes, I did.

Q. And what reason did you give in filling in the line?

A. I gave the reason that Mr. Lugoff gave me—economy cutback.

Q. And how soon after you were fired, did you make such an application? [289]

* * *

The Witness: I think I may have something in my purse that can tell you the exact date I filed it.

Q. (By Mr. Kaufman): Well, perhaps I can refresh your memory without checking your purse.

A. I would say it had been approximately seven weeks.

Mr. Kaufman: I would like to offer into evi-

(Testimony of Gloria Hickey.)

dence, your Honor, the application of the witness for unemployment insurance as Respondent's—I imagine it would be Exhibit "A"?

Trial Examiner: It would be No. 1. It is your first exhibit.

* * *

Q. (By Mr. Kaufman): Now, was Miss Fitzgerald there that morning?

A. Miss Fitzgerald came in that morning while we were all [290] there. Now, whether or not she was there when he first came in, I don't recall.

Q. She was wearing a union button, was she not? A. Yes, I gave her mine.

Q. And she was wearing it?

A. And she put it on.

Mr. Grodsky: I was going to object to that as not placing the time.

Trial Examiner: Well, this will come.

Q. (By Mr. Kaufman): This had occurred after you talked on the 18th?

A. That is right.

Q. And it started at 11:00 o'clock on the 18th?

A. I didn't say that. I said on the morning of the 18th Mr. Lugoff came in at approximately 8:45.

Q. Was it the morning of the 17th about 11:00 that she was wearing a union button?

A. I don't recall on the morning of the 17th seeing her at all.

Q. Then did you see her on the 16th?

A. She was in and out of the office.

Q. When did you give her your button to wear?

(Testimony of Gloria Hickey.)

A. On the morning of the 18th.

Q. At what time about?

A. Let us say between 8:45 and 9:15. [291]

Q. And how long did you remain in the office after you got your pay checks?

A. Maybe thirty minutes.

Q. Was she wearing a union button during a substantial part of that thirty minutes?

A. I gave her my union button after I had received my checks, after Mrs. Farley had received her check also. Mrs. Farley, Mr. Lugoff, Dorothy Bush and Miss Fitzgerald and myself were there.

Q. Was she wearing it?

A. Yes, she put it on and was wearing it.

Q. Was it in plain view?

A. I would say yes. [292]

* * *

Redirect Examination

By Mr. Grodsky:

Q. Do you have a copy of the statement that you made to the Examiner of the Board?

A. I have a copy of it.

Q. Now, with reference to this unemployment insurance— [300] where is that exhibit?—application, you made application for unemployment insurance because you were not working; is that correct? A. That is true.

Q. Had you at any time since your lay-off been offered any job by the Herald American?

(Testimony of Gloria Hickey.)

A. I have not.

Q. When you went in to see the interviewer, did the interviewer ask you why you were discharged?

A. She did.

Q. What did you tell the interviewer?

A. I told her that they told me——

Mr. Kaufman: I am going to object to that as improper examination.

Trial Examiner: I think it is proper. I have heard this before and the witness may explain why she put that in.

Mr. Kaufman: May I pursue this just a moment?

Trial Examiner: Sure.

Mr. Kaufman: Is she entitled to enter into a conversation between herself and the interviewer? To me, this violates every rule that I know. Now, if there was a reason for it, but the evidence doesn't disclose it.

Trial Examiner: I am going to take the testimony. This question, as you may understand, comes up from time to time, this very point, the filling out of these forms and I [301] do not address myself to the weight to be given to it as yet. They are merely other admissions and admissible as such, but I have, for my part, consistently and for good reasons, taken in testimony which has led up to the filling out of the application. In other words, the subject has been opened. Go ahead.

Q. (By Mr. Grodsky): When the interviewer

(Testimony of Gloria Hickey.)

asked you the reason for your discharge, what did you tell her?

A. I told her they told me it was an economic cut back but that I felt fairly certain it was because I had joined the American Newspapers Guild as they had very strong feelings against the Guild.

Q. When you filled that out, were you given any instructions as to what reason to put in?

A. No.

Q. Is there any reason why you did not mention the possibility of the newspaper Guild as being the reason for your discharge?

A. I told that to the interviewer but the reason they had given me was economy cut back and I thought it fair to use what they had said.

* * *

Recross-Examination

By Mr. Kaufman:

Q. The interviewer did not tell you to put [302] the words "economy cutback" in there?

A. No.

Q. Do you know the name of the interviewer?

A. No, but I would recognize her.

Q. You mentioned the fact that you had made a statement to the investigating officer?

A. That is correct.

Q. And that statement was transcribed ultimately or was it written up that same day?

A. Yes.

(Testimony of Gloria Hickey.)

Q. Did you get a copy of it that same day?

A. Yes, I have a copy now.

Q. Did you get a copy the same day, that was what I asked?

A. Yes, I got a copy the same day.

Q. Did you also receive a copy of Mrs. Farley's statement? A. I did not.

Q. Do you have the copy of the statement that you received? A. Yes.

Q. Is the copy in your possession now?

A. Yes, it is.

Q. Did you read this statement in order to refresh your memory before taking the witness stand today? A. I did not read it today.

Q. When did you read it; yesterday?

A. I read it about three days ago. [303]

Q. How many times have you read it since you first received it? A. Once.

Q. I take it the once was when; three days ago?

A. No, I read it shortly after I got it.

Q. That is the first time?

A. To be sure it was correct.

Q. Did you find any errors? A. No.

Q. Then you read it again?

A. About three days ago.

Q. How long a statement is it?

A. About two pages.

Q. And you read it in order to refresh your memory before coming to this witness stand; would it be fair to say that? A. Yes.

(Testimony of Gloria Hickey.)

Q. And it did refresh your memory; would it be fair to say that?

A. Yes, it refreshed my memory somewhat.

Q. Now, may I examine the aid to memory— [304]

* * *

RAYMOND J. ROSS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Grodsky:

Q. Will you state your name and address, please?

A. Raymond J. Ross, 13807 Bluegrove Avenue, Bellflower.

Q. Mr. Ross, in what position were you employed by Herald American?

A. As city editor of the Lakewood edition.

Q. When were you employed by the Herald American? A. On or about March 22, 1954.

Q. And during the period of your employment, did you have any discussion with any representative of management about the Guild? A. Yes.

Q. With whom did you have such discussion?

A. Mr. Butler.

Q. And when did that conversation take place?

A. At about 1:00 p.m. on July 12th.

(Testimony of Raymond J. Ross.)

Q. Of 1954? [308] A. Yes.

Q. Where did the conversation take place?

A. On the parking lot of the Lakewood Country Club, Los Angeles.

Q. Was there anyone else present but you and Mr. Butler? A. No one else was present.

Q. What did you say to him and what did he say to you?

A. He said, "I hope you haven't been sucked into this Guild, have you?" And I said, "Guild—what do you mean?" And he said something to the effect that it was a newspaper Guild.

Then he pulled a Guild membership application from his pocket and showed it to me and said, "One of my boys was approached with this and of course, he brought it to me right away and I just wondered if you had been connected with it."

And I said "No, I guess I am too new. I guess they do not trust me."

Q. What else was said, if anything, do you remember? A. He indicated——

Trial Examiner: Tell us what he said not what he indicated, to the best of your recollection.

The Witness: All right, I am sorry.

He said that he had always associated the newspaper Guild with the Leftist movement and especially since Phil Connelly had appeared in the picket line when the Huntington Park Signal had gone out on strike some years before. [309]

(Testimony of Raymond J. Ross.)

I asked him who Bill Connelly was and he said he had been an editor of the "People's World." I don't recall any other conversation regarding the matter at that particular time.

Q. Do you recall the date on which you were discharged? A. That was August 17, 1954.

Q. Now, who discharged you?

A. Warren Butler.

Q. Did he come to the Lakewood office?

A. Yes.

Q. What time did he get to the Lakewood office?

A. Approximately at 4:30.

Q. Will you describe what happened from the time that he came to the Lakewood office on that occasion?

A. At the time he came in, I was very busy finishing up my lead story of the week and writing a headline and he just stood by. The messenger was there and I wanted to get that batch of copy in as soon as possible, and about ten or fifteen minutes later, we walked outside and he told me that the company was having an economy drive and that I would be no longer on the payroll after tonight.

Q. Did you say anything then?

A. I said, "Of course, I know and you know that I am being discharged because I am wearing this Guild button," which I pointed to at that time, on my person. [310]

And he said that he was told that there was an

(Testimony of Raymond J. Ross.)

economy drive and that I could interpret that any way I wished.

Trial Examiner: I don't know whether the witness is finished or not. Are you finished with the conversation?

The Witness: I don't recall any other part of it at this time.

Q. (By Mr. Grodsky): Did you have any talk with any other representative of management about your layoff or discharge? A. Yes, I did.

Q. With whom did you talk?

A. To Colonel Smith.

Q. Was that in person or by telephone?

A. Telephone.

Mr. Kaufman: Would you speak up a little louder, please?

The Witness: All right.

Trial Examiner: Keep your voice up, would you, please?

Q. (By Mr. Grodsky): What was your conversation with Mr. Smith?

A. I asked Mr. Smith why I was being discharged and he said that it was because of an economy drive that he had insisted on a retrenchment three or four weeks earlier. And that some persons had been laid off, I believe he said three or four persons had been laid off, and he had further instructed on a retrenchment and that was why I was being laid off, as a result of that. [311]

And he thought it was only fair that I should be

(Testimony of Raymond J. Ross.)

let go first because, as far as he knew, I was the newest employee in that department.

Q. Was that all?

A. He also indicated that I would be rehired if business warranted it.

Q. Were you ever called back to work?

A. No.

Q. Returning to your conversation with Mr. Butler, Mr. Butler indicated as of when that you would be let go?

A. He said I would be off the payroll that night.

Q. Was there any discussion between you and him with reference to your work?

A. I don't understand the question.

Mr. Kaufman: These questions are slightly leading and suggestive. I am going to object.

Trial Examiner: I will overrule the objection. The witness has indicated, I think, that his memory was exhausted.

You may answer the question.

Mr. Grodsky: He did answer the question but he wasn't certain what my question referred to. It seems it was ambiguous to him.

Trial Examiner: All right, rephrase it.

Q. (By Mr. Grodsky): Is Tuesday normally a busy day or a light day for you? [312]

A. It is the busiest day in the week in the editorial department on this job.

Q. Normally when do you get through with your work on Tuesdays?

A. At that time I got through with my work

(Testimony of Raymond J. Ross.)

not on Tuesday but Wednesday morning at around from 2:00 to 4:00 a.m.

Q. Now at the time that you were speaking to Mr. Butler, you still had some unfinished work?

A. Quite a bit of it.

Q. Did the question of what would be done with that work come up in your discussion with him?

A. I asked Mr. Butler if I was to finish out the rest of the edition, which, of course, would carry me on to the next day, and he said that was something I should discuss with Colonel Smith.

Q. Did you discuss it with Colonel Smith?

A. Yes, I did.

Q. When did you discuss this with Colonel Smith?

A. At the time I called him. The same call I mentioned previously.

Q. And what was said with reference to this subject?

A. He indicated that I should discuss that with Mr. Butler. I told him I had already discussed it with Mr. Butler and had been referred to him. Then Colonel Smith left it up to me whether or not I would finish up that edition. I chose to [313] finish it.

Trial Examiner: And completed your work when?

The Witness: At about 5:00 a.m. Wednesday morning. However, I had some trouble with my car and did not arrive at the Compton office until

(Testimony of Raymond J. Ross.)

some time later that morning, around 7:30, I believe, I am not positive.

Trial Examiner: You did not have any trouble, if I understand you correctly, before you finished your work?

The Witness: That is correct.

Trial Examiner: Before we get away from the subject, what was your weekly salary at the time of your discharge?

The Witness: At that time I was drawing \$75.00 per week plus \$10.00 car allowance.

Trial Examiner: Whether or not you used the car?

The Witness: It was a flat rate. We did not have to account for it in our expenses.

Trial Examiner: All right. Go ahead.

Q. (By Mr. Grodsky): Mr. Ross, prior to the time of your discharge, was there any usual or normal time when you would get through with your work on Tuesday evening?

Trial Examiner: Hasn't he answered that?

Mr. Grodsky: I don't believe so—wait a minute—did he answer that, counsel?

Trial Examiner: Well, I have heard no objection, but it will not take any more time, that is granted. You may answer. [314]

The Witness: The Tuesday work usually carried on until some time between 2:00 and 4:00 o'clock on Wednesday morning.

Q. (By Mr. Grodsky): When you were through with that Tuesday work, did you have any cus-

(Testimony of Raymond J. Ross.)

tomary practice; what did you do with your material when it was completed?

A. I usually carried my material to the Compton office as there was no messenger service at that time.

Q. And you would take it to the Compton office immediately after completing it? A. Yes.

Q. Do you remember what you were wearing on the date of your discharge?

A. I recall the shirt I was wearing but not the trousers.

Q. Where was the Guild button affixed?

A. On the upper portion of the pocket on the left-hand side of my shirt.

Q. There was nothing hiding it?

A. No, it was a sports shirt and I had no jacket.

Q. What color was the sports shirt?

A. It was a light buff color.

Q. I show you General Counsel's Exhibit No. 9 and ask you if this is the kind of union button you were wearing on that day?

A. It appears to be of the same design and construction.

Q. (By Trial Examiner): Had you ever worn it at work [315] before? A. I did not.

Q. Was this the first day you had began to wear it? A. Yes, it was.

Q. When, during that day, did you put the button on?

A. Before I left home and I arrived at the office

(Testimony of Raymond J. Ross.)

at approximately 10:30 that morning. I didn't take it off at any time during the day.

Q. Can you tell me for what period of time or what periods of time Mr. Butler was in the office that day, to your knowledge and observation?

A. To my knowledge and observation, Mr. Butler wasn't in the Lakewood office at any time until approximately 4:30 that afternoon.

Mr. Grodsky: No further questions.

Cross-Examination

By Mr. Kaufman:

Q. Mr. Ross, at 4:30 in the afternoon, you say Mr. Butler arrived. Well, what time did you have this conversation, this first conversation with him?

A. Ten or fifteen minutes after his arrival.

Q. Were there any customers at the counter at that time? A. I don't recall that.

Q. There could have been; is that correct?

A. Yes.

Q. Did you have a termination check of any kind? In other [316] words, you, yourself, decided to work on, on the Tuesday and quit on Wednesday? A. Yes.

Q. How long were you paid for?

A. I was paid for the complete week and one week following. I was paid through August 28th.

Q. And when did you get your check?

A. It was the following Friday or Saturday. I don't recall at this time.

(Testimony of Raymond J. Ross.)

Q. When you talked to Colonel Smith and asked him about being discharged and so forth, he told you that you were a very new editorial man?

A. He did not so state.

Q. Well, I misunderstood your testimony. I thought he said you were one of the newest employees in the department?

A. He said as far as he knew, I was the newest employee in the department.

Q. Did you answer that? A. I did not.

Q. Was it true? [317]

* * *

The Witness: I believe there were two persons younger in that employment.

Q. (By Mr. Kaufman): You, at least, did not call that to Mr. Smith's attention? A. No.

Q. Now, he did say that if business picked up, you would be rehired; is that right?

A. Those may not be his exact words. He said something that led me to believe that.

Q. He did not question you about any activities, did he? A. He did not.

Q. He did not say you were being discharged because of any union activities?

A. He did not. [318]

* * *

Q. However, it probably deserves the same answer as it got. Now, he and you were walking back I take it and as I understand [320] it, to your respective automobiles together, to go on your re-

(Testimony of Raymond J. Ross.)

spective ways? A. That is right.

Q. And this is the time the alleged conversation took place? A. That is correct.

Q. And there were the two of you, Mr. Butler and yourself? A. That is right.

Q. Now, at what time of the day would you say that this happened?

A. At 1:00 p.m. approximately.

Q. At that time were you a member of any Guild or Union?

Mr. Grodsky: I object.

Trial Examiner: Well, this goes to the witness' interests.

Mr. Grodsky: May I point out that the witness is interested from the fact that there is an 8(a)(3).

Trial Examiner: I will permit the question. You may answer, sir. Or, do you want the question read?

The Witness: My answer to this would be I don't know.

Q. (By Mr. Kaufman): Well, would you explain that further as to why you don't know?

A. I had, previous to that time, applied for Guild membership but I had not, at that time, received any acceptance.

Q. When had you originally applied?

Mr. Grodsky: Now, I will object. Certainly this would not have any bearing on the matter at all. [321]

Trial Examiner: Well, it also has another aspect.

(Testimony of Raymond J. Ross.)

I will permit some degree of interrogation on this.
I will permit this question.

Q. (By Mr. Kaufman): When had you applied, sir?

A. I have difficulty in recalling the approximate time, but it must have been near the end of April or the first part of May.

Trial Examiner: Of this year?

The Witness: Yes.

Q. (By Mr. Kaufman): You commenced work, I believe, on March 22nd? A. Yes.

Q. And it was shortly thereafter, any way, in point of time? A. That is correct. [322]

* * *

Mr. Kaufman: Right. It is stipulated that the Herald Publishing Company purchased from a Glendale, California, broker, three comic cartoons to use as filler material, when and if there was a need in its papers.

The broker from Glendale, California, ordered for the Herald Publishing Company from Harry Cook Syndicate, New York City, New York; Chicago Sun Times, Chicago, Illinois, and the McNaught Syndicate, New York, New York.

These were used not regularly or in sequence by the Herald Publishing Company. The issues of October 14th, 1954, and December 2nd are typical of the use of these fillers.

* * *

Mr. Kaufman: Nine issues representing the nine different areas covered by the Herald American were examined, bearing the dates December 2nd and October 14, respectively. The examination revealed that in the October 14th issue of the Herald American, there appeared in the Downey-Riviera issue, one [331] cartoon on page 19 of said paper, being a Field Enterprise, Inc., cartoon, entitled "Angel," in size about 4 inches by 4 inches. This newspaper contains not less than thirty-six pages.

There appears in the Paramount-Hollydale issue of October 14, 1954, on page 6 of said paper, two additional cartoons entitled "Angel," each 4 inches by 4 inches, this issue being approximately the same size as the Downey-Riviera issue.

An examination of the other seven newspapers, to wit, Lakewood Herald American, Los Altos Herald American, Bellflower-Artesia Herald American, Norwalk Herald American, North Long Beach Herald American, Lynwood Herald American and Compton Herald American, all papers printed the same day of approximately the same number of pages, revealed no cartoons whatsoever.

An examination of the same papers, to wit, the nine issues bearing the date of Thursday, December 2nd, showed the Norwalk Herald American as having two cartoons also entitled "Angel," the same size as heretofore mentioned.

The other eight papers heretofore enumerated had no cartoons whatsoever.

It is further stipulated that these cartoons entitled "Angel" started on August 25th, 1954, and

that they are not in continuity, regularity nor used in each edition of the same newspaper, to wit, where nine editions of the newspaper were mentioned herein, they would not appear in all nine. [332]

It is further stipulated that they were discontinued as of December 8, 1954.

It is to be noted that by this stipulation, we are covering, amongst other things, the fact that the number and times and sizes of cartoons are representative of and typical for all issues published during the period from August 25 to December 8, 1954, inclusive.

It is further stipulated that cartoons furnished by these three syndicates have been used occasionally, but at no frequency or of a greater size of extent than "Angel," during the period August 25 to December 8, 1954, inclusive, when such service was terminated.

* * *

Trial Examiner: On the record.

Gentlemen, the stipulation is read into the record.

Is that your stipulation?

Mr. Grodsky: I am prepared to stipulate to those facts.

Mr. Kaufman: All right.

Trial Examiner: All right, Mr. Kaufman has signified his assent, too. [333]

* * *

RALPH J. BREWER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Grodsky:

Q. Will you state your name and address, please?

A. Ralph J. Brewer, 5105 Escalon Avenue, Los Angeles 43.

Q. What is your position—what was your position, Mr. Brewer, during the months of July and August with the Herald American?

A. General manager.

Trial Examiner: Are you referring to 1954, Mr. Grodsky? You are, aren't you?

Mr. Grodsky: Yes, 1954. [334]

* * *

Q. (By Mr. Grodsky): Mr. Brewer, how long have you been employed at the Herald American Publishing Company?

A. Since January 10, 1937.

Q. When you came, sir, in what capacity did you come there?

A. I had six caps on the wall. I held everything from a janitor's job to the top job, or, rather, to manager.

Q. I don't suppose you held that janitor job for very long? A. For a couple of years.

Q. What was your next job after that?

(Testimony of Ralph J. Brewer.)

A. I was manager and went to the title of general manager in 1945, I believe.

Q. As general manager, what are your duties at this time?

A. I am not general manager at this time.

Q. Excuse me, in July and August of this year, when you were general manager, what were your duties?

A. I had complete charge of the entire operation, being under the supervision of Colonel Smith.

Q. And did you have charge of advertising?

A. Indirectly.

Q. Were you ever directly in charge of [337] advertising? A. Many years ago.

Q. How many years ago?

A. Previous to 1945, I would say.

Q. What title did you have at that time?

A. Manager.

Q. Has the nature of the operation changed since that time?

A. It has grown considerably since that time.

Q. Aside from an increase in size, has there been any change in the kind of newspaper you are putting out since that time?

A. No, the newspaper has stayed the same type of newspaper but we have put on additional editions.

Q. Has the kind or quality of advertising changed in any way?

A. No, except more of it.

Q. Now, Mr. Brewer, in your operation, do you

(Testimony of Ralph J. Brewer.)

have a kind of advertising described as "national advertising"? Did you have any which you would describe as "national advertising"?

Mr. Kaufman: To which I am going to object as calling for a conclusion of the witness and also it is irrelevant, immaterial and incompetent and not within the issues of the case.

Trial Examiner: You are referring, I take it, that in the course of his duties that he would describe any advertising as "national advertising" in connection therewith. I will overrule the objection.

The Witness: Can I have the question again, please? [338]

Mr. Grodsky: Would you read the question?

(Question read.)

The Witness: In my opinion, no.

Q. (By Mr. Grodsky): Well, I didn't ask for your opinion. I asked it in language of your newspapers or in the language of department, do you have something that is called "national advertising"?

Mr. Kaufman: I submit that the question has been asked and answered.

Trial Examiner: I don't think so. I will overrule the objection. Do you give us your opinion. I purposely asked counsel to explain his question on the assumption that you were listening to the examination, so that it will make it clear whether or not in the course of your duties and in connection

(Testimony of Ralph J. Brewer.)

with the operation of the newspaper, you had such a thing as national advertising.

The Witness: The answer would be yes.

Q. (By Mr. Grodsky): And in the course of your duties and in the course of your operation, what was encompassed within the meaning of that term, "national advertising"?

Mr. Kaufman: To which I am going to object as irrelevant, immaterial and incompetent, and not within the issues of the case. Whatever his term of "national advertising" might be, doesn't throw any light on what the Board is going to consider "national advertising." [339]

Trial Examiner: I would say that I am going to take testimony. I am going to take testimony if for no other reason than it has already been injected into the case and is intended to describe a kind of advertising they had and possibly might have been a method of defining or advertising a particular type of advertisement.

The point I made before was that in calling something "national advertising" doesn't make it national advertising and I still adhere to that view.

As I say, if for no other reason than for purposes of identifying a certain type of advertising in the course of this respondent's business, I am going to receive the testimony. The objection is overruled.

The Witness: Read the question again, please.

Trial Examiner: Yes, read the question again.

The Witness: Advertising from local agencies or from advertising agencies.

(Testimony of Ralph J. Brewer.)

Q. (By Trial Examiner): May I ask what you have reference to, what kind of local agencies?

A. Any type of copy received from an advertising agency within the Los Angeles or San Francisco or Compton and so forth.

Q. Do I understand when you use the term "local agency," that you mean "local advertising agency"?

A. That is right. [340]

Q. (By Mr. Grodsky): Then I am clear in my understanding that "national advertising" meant the advertising that came to your company from advertising agencies?

A. That is right.

Q. And it only meant that?

A. That is right.

Q. Do your papers still carry that kind of advertising?

A. That is right.

Q. And do you still get that advertising from the agencies?

A. That is right.

Q. And do you still refer to that as "national advertising"?

A. That is right.

Q. You also get advertising placed by local merchants?

A. That is right.

Q. And sometimes a local merchant will place an advertisement just entirely devoted to advertising, a single nationally known product?

A. I would not say that, no.

Q. Showing you General Counsel's Exhibit No. 2 for identification, and I show you this advertisement of Lee's Department Store, which has previously been described, in connection with the testimony of Mr. Hartwell, this advertisement is en-

(Testimony of Ralph J. Brewer.)

tirely devoted to advertising an item called "Playtex Living Bra"? A. Yes. [341]

Q. And the advertisement is placed by Lee's Department Store? A. Yes.

Q. Was this advertisement placed by an advertising agency?

A. Not to my knowledge. Lee's place their own advertising. We have an account with them.

Q. Would you construe that as "national advertising" in your operation?

A. Absolutely not.

Q. Now, you have from time to time, advertisements by local dealers who sell Fords and Chevrolets and other makes of automobiles?

A. That is right.

Q. And those advertisements are placed by the local dealers; is that correct? A. Yes.

Q. And you consider that in your operation as "local advertising"? A. Yes.

Q. Not "national advertising"? A. No.

Q. Now, in connection with that advertising—I am now referring to advertisements by automobile companies—you are aware of the fact that most of the time they use a mat which comes from an advertising agency, or are you? A. No. [342]

Q. Do they sometimes use mats which come from advertising agencies?

A. The dealers themselves authorize the ads, they O.K. the ads. It is their money. They pay for the ads. They may come from an agency, so we consider that as local advertising, regardless of whether

(Testimony of Ralph J. Brewer.)

we know or don't know where the mats come from.

Q. I am asking you if you know whether, in fact, the mats come from advertising agencies?

A. No.

Q. You don't know? A. No.

Q. Have any of the mats that have come to your company, come directly from advertising agencies?

A. Yes.

Q. Then you do know in some cases, the mats do come from advertising agencies?

A. Yes, I would say that some of them may.

Q. You say some of them may; do you know for a fact that some of them do?

A. Well, say some of them do.

Q. Fine. Now, why do the agencies send you the ads, if you know?

A. They are only sent to us upon authorization of the local dealer. [343]

Q. Is it your testimony, Mr. Brewer, that those mats are sent to you after you have made a sale?

A. A contract may have been made with a local dealer with the observation that we may get the mats next winter but it still comes from an order of the local dealer.

Q. Now I am asking you if there is another kind of operation by which the advertising agencies send the mats before you have any kind of a contract for the placement of those particular mats in the paper? A. No.

Q. To your knowledge, have there ever been cases in which you have received mats and after

(Testimony of Ralph J. Brewer.)

receiving the mats sent the display salesman to solicit advertisements with the representation that you have a mat for a good display, or a good advertisement?

A. You are talking about automobile dealers now?

Q. Yes. A. No.

Q. Have you done it with reference to other commodities? A. No, not to my knowledge.

Q. Do you know from your knowledge as to whether some advertising agencies make it a practice to send the mats to your office with a view for your solicitation of the business?

A. It isn't a general practice, no.

Q. Now, can you give us an estimate, if you can, of how [344] frequently or how many advertisements you have placed for local dealers in which the mats have come to you from advertising agencies? A. I have no idea.

Q. Do you know whether these advertising agencies are agencies for the local dealer or are they agencies of the manufacturer?

A. Some would perhaps be for the manufacturer and some may be for the local dealers' association.

Trial Examiner: Well, let us get down to specifics. What was the last occasion when your newspapers received any advertising of an automobile from an advertising agency?

The Witness: We do, every week.

Trial Examiner: Now, specifically, what makes of cars are involved?

(Testimony of Ralph J. Brewer.)

The Witness: We have practically every make of popular cars of the dealers in California, I mean in Compton and with the new models being announced just now, they are spending a lot of money. And we have been very heavy recently in that type of advertisement. Could I explain my thought on this automotive advertising?

Trial Examiner: In a moment perhaps. I want you to keep your thought here and I will be very happy to get any relevant information later on.

Dealing with the season, is it a case that there is a [345] period of the year when the concentration of the advertisement of automobiles is the heaviest in the issuance of new models?

A. That is right.

Q. Does this advertisement come from agencies?

A. Your definition of advertising and mine is at variance.

Q. The copy?

A. The copy comes from an agency.

Q. Now, we will take up both features to try to get the picture. Have you occasions when you get both the copy and the placement of the advertisement from agencies in relationship to these automobile models?

A. Only in all cases where it has to be O.K.'d by the local dealer.

Q. You have such cases, but in each case the placement of the advertisement has to be O.K.'d by the local dealer?

A. Yes, by the local dealer.

(Testimony of Ralph J. Brewer.)

Q. Now, taking a season in the year when the new models come out, and I don't care whether you take this season or last season, whichever will be easier for you, can you tell me whether or not it is customary or standard practice to get both the advertisement and the copy from the advertising agency rather than from the dealer, or to get it from the dealer rather than from the advertising agency, realizing, of course, that when you get it from the advertising agency, you [346] have still to get the O.K. from the local dealer?

A. Most of the copy is sent direct, either from the electroplating company, which isn't an agency or from the agency to the paper, with instructions that it must be O.K.'d by the local dealer, because it is their money they are spending and it must be O.K.'d by him before the order is valid.

Q. Who places the order for advertising, bearing in mind that it needs the dealer's approval?

A. An agency.

Q. An advertising agency? A. Yes.

Q. Will you give me the names of advertising agencies that place this automobile copy?

A. I cannot tell you. I don't come in contact with these names, your Honor.

Q. Let us take last season of the year, the names of the agencies?

A. I have not been in this type of advertising since 1945. I could give you one name if you wanted an example of one account.

(Testimony of Ralph J. Brewer.)

Q. I would like to have whatever information you have.

A. Batton, Barton, Durston & Osborne.

Q. Do you know where their office is?

A. They have one in Los Angeles and one in Hollywood.

Q. Do you know whether they have an office, either their main [347] office or otherwise, in New York City?

A. I could not say. We deal only with the Los Angeles office.

Q. Now, what are the makes of cars for which that concern places advertisements?

A. Packard.

Q. The Packard Motor Company?

A. Yes.

Q. Now, I promised you an opportunity to make some explanation you wanted to give me before. I don't know whether it is relevant or competent. If it isn't I will strike it, but I am going to receive it.

A. O.K. On the term of "national advertising," in relation to Mr. Hartwell's testimony, I would like to give exactly what we or myself calls "national advertising" as such, in our office.

Q. Have you not done so? A. No.

Q. All right, go ahead.

A. I will give you a short illustration.

Q. Go ahead, sir.

A. Well, Dan B. Minor—

Q. Who, sir?

A. Dan B. Minor, an advertising agency in Los

(Testimony of Ralph J. Brewer.)

Angeles handles the Lakewood Plaza Sub-division, that is, Lakewood Plaza Sub-division located in the area we serve. They also handle Weber [348] Bread, which is a local product.

Now, both of those are strictly local. They have nothing at all outside of the state on those two items. Yet we call them, although Mr. Hartwell's definition is national advertising manager, who handles those particular accounts, local accounts.

We have another firm here who handles—Stiller and Associates—they handle real estate tracts which we carry. We have, I believe, the Heintz Company who carries Bekins. It isn't long distance, it is local advertising. We have the Glasser Agency, which handles the Ralph Markets, which is strictly a Compton and Los Angeles market only.

Q. Do you refer to these as "national advertising"?

A. They are advertising agencies and Mr. Hartwell, as national advertising manager, handles these particular agencies and is titled national advertising manager, but his title of national advertising manager doesn't indicate that he is handling nothing but all nation-wide advertising accounts.

Q. But my point is, what do you call "national advertising"?

A. That is what I am saying, we call all of that national advertising.

Q. Let me ask you this preparatory question and perhaps we will be clear. Do you ever receive any advertisements for automobiles direct from the

(Testimony of Ralph J. Brewer.)

dealer, rather than from an advertising [349] agency? A. Yes.

Q. And have such advertisements included the popular makes of cars to which you have previously averred?

A. There are two or three of them that handles our advertising.

Q. And do I understand that that doesn't come from an advertising agency, therefore, you do not call it "national advertising"?

A. Yes, the local salesman handles that account.

Q. That isn't my question as to who handles the account. My question goes to the label, if any, that you folks supply to the advertising, whether you call that kind of advertising "national advertising"?

A. We don't break it down that way. The local salesman handles the account. On the agency deal account, it is local advertising or otherwise, and as long as it comes through an agency Mr. Hartwell handles it and it is "national."

We do not carry the account of "Playtex" through any agency or through any national account. We have nothing to do with the national account on it. It is handled at the local level, so that is local business.

Q. Now, do you know, of your knowledge, in the course of discussions with these firms, such as Lee's, whether or not the funds are supplied for such advertisement by the retailer who places the

(Testimony of Ralph J. Brewer.)

advertisement or whether the funds are [350] supplied for such advertisement by the manufacturer?

A. As far as we are concerned, the funds are supplied by Lee's as we bill them and they pay it.

Q. I take it you don't know?

A. We don't know.

Q. I think I understand what you have been getting at and we will cover that point. I will put a question to you which will help you, I think, to finish your explanation.

Why do you call what you have referred to as "national advertising" by that name, if you know that is why the company calls it by that name?

A. Handling of advertisements by agencies isn't all over the City of Los Angeles or San Francisco or various places, but there is a lot of detail work that is required on it and it is better to have one man handling it than trying to have nine, ten or eleven men in the various editions trying to handle the same thing.

I will give you another illustration if I may as to the point of local origin of automobile advertising.

Q. No, excuse me a minute, I don't know if you are getting at what I have in mind. You call something "national advertising." What I am trying to get at is this: Why do you call it "national advertising" as distinguished from advertising agency advertising or "X" advertising?

A. We call it that because it has been a trademark name. [351] We have done it ever since we

(Testimony of Ralph J. Brewer.)

have been there. As far as Mr. Hartwell having a title of "national advertising manager," it was, more or less, given to him for the years of service rather than for any work he does in any particular way, except just handling the details that come along.

Q. How about the kind of advertising?

A. We lump it all under that particular head, as long as it comes through an advertising agency, it is called "national advertising."

Q. Do you know whether the custom of reference to it as that in your company arose because these agencies handle products which are distributed on a nation-wide scale, as, for example, the Ford Motor?

A. We follow no such trend. Instead of that, because we had to have a man to handle that particular thing we gave him the title of "national advertising manager." All newspapers you will find have a classified advertising manager, a display advertising manager, and some of them for automotive editorials—we do not have that—promotional manager.

It is nothing more or less than a phrase that is used in all newspapers, big or little.

Q. And you borrow it?

A. Yes, we borrow it.

Q. Have you been associated with other newspapers?

A. Previously to my seventeen years at the Herald American. [352]

(Testimony of Ralph J. Brewer.)

Q. Well, can you tell me from your knowledge and experience and your duties as you have described them, and your connection with newspaper publishing—I am asking for an opinion now of what I would call an expert—what the terms of “national advertising” denote in the newspaper publishing business?

A. Well, that is a little difficult to explain because of the different types of conditions in different newspapers. I will take the “Los Angeles Times,” if you want me to, but we are certainly not in their department.

Q. In any case, they are not in your department. Go ahead.

A. They have an entire department which is set up for nothing but promotion. They spend hundreds of thousands of dollars cultivating the manufacturers and various buyers of various agencies all over the country.

That is set up strictly as an advertising promotional agency for business located out of town. You can call it “national advertising.”

They will spend just as much money, however, to get an account in San Francisco as they will for one in Detroit, Michigan, or in New York City. It is all according to how much money that particular account has to spend.

I will give you an illustration of United Steel. Fabulous sums of money have been spent by the newspaper giants to get a large United Steel advertising schedule. They have spent [353] all of

(Testimony of Ralph J. Brewer.)

their money in T.V., radio and so on. We do not pretend to have any such department. That is what is recognized as "national advertising."

In a small area or community of the type that we operate within the County of Los Angeles, we are overshadowed by all your newspaper giants.

Q. In circulation?

A. As a daily paper against a weekly distribution paper. We have no chance to get that, so we have no "national advertising" as such. We never have had. We spend no money on it.

Mr. Hartwell handles eight or ten big accounts for us. If he did not, we could never pay him under the title of "national advertising manager."

Trial Examiner: I think I have the picture and I am more than ever persuaded that it is what the advertising is that counts rather than the label. I have taken some time with this witness and have given him an opportunity to explain his business rather fully in the interests of all concerned. [354]

* * *

Q. Now, Mr. Brewer, your company is a member of the California National Publishers' Association?

A. No, the California Newspapers Publishers' Association is, I think, what you mean.

Trial Examiner: Will you keep your voice up, please, Mr. Brewer.

The Witness: Yes, California Newspapers Publishers' Association.

Q. (By Mr. Grodsky): Now, as part of the as-

(Testimony of Ralph J. Brewer.)

sociation develops, do you know whether they try to get national advertising for their members?

A. I don't belong to that group.

Trial Examiner: Do I understand your answer is——

The Witness: I don't know. I do not belong to any national advertising organization or the C.N.P.A.

* * *

Q. Your company doesn't receive any revenues from the [363] C.N.P.A. with reference to advertisements under their national advertising program?

A. That is right. If you will let me say, not to my knowledge. I don't know of any. [364]

* * *

SOL LONDON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Grodsky:

Q. Will you state your name and address, please?

A. Sol London, 1601 West Eighty-first Street, Los Angeles 47, California.

Q. When did you go to work for the Herald American? A. In July of 1950.

Q. And in what capacity?

A. As a reporter.

(Testimony of Sol London.)

Q. Where were you working?

A. At the Compton office.

Q. What was your rate of pay at the time?

A. \$50.00 a week plus \$10.00 car allowance.

Q. At the time of your discharge, where were you employed ?

A. At the North Long Beach office of the Herald American.

Q. How long had you worked at the North Long Beach office? A. Approximately one year.

Q. Do you recall when you were transferred to the North Long Beach office? [376]

A. July of 1953.

Q. What was your rate of pay at the time of your discharge?

A. \$75.00 a week plus the \$10.00 car allowance.

Q. When had you received your last wage increase? A. I believe it was in March.

Q. Of 1954? A. Yes.

Q. And how much was that increase?

A. A \$5.00 increase.

Q. When did you become active in union organization?

A. Oh, I believe it was the latter part of April or the first part of May, 1954.

Q. And did you ever discuss the matter of the Guild with any representative of management?

A. Well, I did with Mr. Cleland.

Q. Oh, well, Mr. Cleland, I am afraid—well, let me go into that. When you were working at the Compton office, what was your position?

(Testimony of Sol London.)

A. I was a reporter.

Q. And from whom did you receive assignments?
A. From Mr. Cleland and Mr. Butler.

Mr. Kaufman: Now, just a minute. I think we are going to waste a lot of time in this hearing if we are going to go into Mr. Cleland and make him a supervisory officer. I think the record clearly indicates that he isn't and I am merely [377] stating this to expedite the hearing. If we are going to have a hassle it is going to take some time.

Mr. Grodsky: I am prepared to take some time.

Trial Examiner: Well, so far there has been nothing established, but the General Counsel has a right to produce some evidence concerning it and so have you.

Mr. Kaufman: All right.

Q. (By Mr. Grodsky): When you first came to work, who employed you?
A. Mr. Butler.

Q. And did he introduce you to Mr. Cleland?

A. Yes.

Q. When he did, what, if anything, did he tell you about Mr. Cleland's duties with reference to you?

A. He introduced me to Jack Cleland and he told me that I would be working under Mr. Cleland and he told Mr. Cleland to assign me to some stories for the coming issue that week.

Q. While you were working at the Compton office, did you have occasion to observe whether there were other reporters working in the Compton office?
A. Yes.

(Testimony of Sol London.)

Q. Do you know whether or not they received assignments of stories from Mr. Cleland?

A. Yes, sir.

Q. Did they? [378]

A. Yes.

Q. In the absence of Mr. Butler, who was in charge of the operations, so far as the editorial department was concerned?

A. Mr. Cleland was.

Trial Examiner: Well, what did he do that he did no do when Mr. Butler was there? You say he was in charge. What did he do when Mr. Butler wasn't there, that is, Mr. Cleland?

The Witness: Mr. Cleland gave assignments.

Trial Examiner: Excuse me a minute. You just said that when Mr. Butler wasn't there or was away, Mr. Cleland was in charge. Now this "being in charge" doesn't mean anything to me.

What did he do when Mr. Butler wasn't there? That is what I would like to know.

The Witness: He was responsible for both the Compton and the Lynwood editions on the editorial side. He took over the assignment of the work. I believe Mr. Cleland would have done that if Mr. Butler had been there.

If there were any questions about a story and whether we should handle it, Mr. Cleland would make that decision and he would make that decision if Mr. Butler wasn't there.

Trial Examiner: Well, what was the last such

(Testimony of Sol London.)

decision that you observed yourself that was made?

The Witness: I do not recall offhand. I was transferred out of Compton in July of 1953, and if Mr. Butler wasn't in [379] Los Angeles, Mr. Butler would tell me or Mr. Cleland would tell me to cover one of Mr. Butler's assignments which would be the City or Building reports.

Trial Examiner: As I understand your testimony, whether or not Mr. Butler was there, Mr. Cleland would give you assignments?

The Witness: Yes, both Mr. Butler and Mr. Cleland would give me assignments.

Trial Examiner: Well, what difference did it make whether Mr. Butler was there?

The Witness: Well, Mr. Cleland would have the sole editorial responsibility for the direction of the news stories and the handling of the stories.

Trial Examiner: Well, go ahead, Mr. Grodsky. I will tell you right now whatever terms I am getting under generalizations about Mr. Cleland, such as "he was responsible for," and "being in charge," are entitled only to a certain amount of weight, if any.

Mr. Grodsky: I realize that.

Q. (By Mr. Grodsky): When did you have this discussion with Mr. Cleland you had reference to earlier?

A. A week before I was discharged, about 10th July.

Q. Do you recall what day of the week it was?

A. Saturday.

(Testimony of Sol London.)

Q. And where did the conversation take [380] place?

A. Well, I had finished making-up on Saturday at the North Long Beach office, the edition and I asked Mr. Cleland—

Mr. Kaufman: Now, just a minute. The question was, "where did the conversation take place?"

Q. (By Mr. Grodsky): Tell us where it took place?

A. In a coffee shop next the Herald American.

Q. In Compton? A. Yes, sir.

Q. Who was present?

A. Just Mr. Cleland and myself. [381]

* * *

Q. (By Mr. Grodsky): Just to refresh your recollection, you testified about you and Mr. Cleland being in the coffee shop? A. Yes.

Q. On Saturday? A. Yes.

Q. Now, will you tell us what you said to him and what he said to you?

A. Well, we ordered coffee, of course, and we started talking in generalities and the subject got around to the Guild and Mr. Cleland mentioned that there had been a Guild drive going on and I expressed surprise at that time.

Mr. Kaufman: May I have some foundation facts on this conversation as to time? I do not believe I got it.

Q. (By Mr. Grodsky): Now, when did this conversation take place?

(Testimony of Sol London.)

A. I believe it was before noon on Saturday, July 10th.

Mr. Kaufman: Miss Reporter, would you please read the record about this conversation?

(Record read.)

Trial Examiner: Now, proceed with the conversation.

The Witness: Oh, Mr. Cleland asked me if I knew anything about it and I asked Mr. Cleland if he knew anything about and he said, "No," that Maxine Galt who worked in the office had brought in a copy of the "Guildsman" which [3991] stated——

Trial Examiner: Do not tell us what the newspaper stated, unless Mr. Cleland said what it stated.

The Witness: Well, he did. He said that the paper said an organizing drive was going on at the Herald American and I asked Mr. Cleland if he were going to join the Guild and he said, "Well, I will if everyone else does." And I told Mr. Cleland finally that I was as active in organizing a Guild unit and asked him if he would join.

Mr. Cleland seemed to be taken by surprise. He said, "I never thought that you would be in it," and I told him that a number of us in the Herald American believed that a Guild was needed in order to raise the wages and make for better working conditions, and we believed that a Guild had been needed for some time.

I gave Mr. Cleland a Guild application card and

(Testimony of Sol London.)

Mr. Cleland said he would think about it and let me know a few days later. He also mentioned regarding my participation in the Guild drive. He said, "I hate to see you crucified, Sol."

We returned then to the Herald American office and I continued on my way to my car and went home and Mr. Cleland went into the office.

Q. (By Mr. Grodsky): Did you have any further discussion with Mr. Cleland?

A. Yes, sir.

Q. When was your next discussion with [392] him?

A. It was on the Wednesday following that Saturday.

Q. What time did this occur?

A. In the morning.

Q. Do you have any better recollection?

A. Yes, very early in the morning.

Q. At what time would you say?

A. Oh, maybe about 9:30, I believe.

Q. Where did this conversation take place?

A. In the Compton office.

Q. In the office?

A. Yes, and I asked Mr. Cleland, well, if he had decided to join the Guild yet and he said, "no," that he had thought over it and well, he had talked to somebody at the Huntington Park Signal and Mr. Cleland said he did not think he would be eligible because he was a part of management.

I asked Mr. Cleland for the return of the Guild

(Testimony of Sol London.)

card and he said that he did not have it and the subject was closed then.

Q. Who notified you of your discharge when you were discharged? A. Mr. Butler.

Q. When?

A. It was on Saturday morning, July 17th.

Q. At what time of the day?

A. About 11:30. [393]

Q. Where did this take place?

A. It took place, oh, perhaps a quarter of a block from the Herald American office, near the Everglades Restaurant parking lot.

Q. How did you happen to be there?

A. Mr. Butler came into the back shop and he said he would like to speak to me before I left and when I had completed my make-up I went over to Mr. Butler in the office and said, "You wanted to speak to me?" And he said, "Yes." And we went over near the Everglades Restaurant parking lot.

Q. Was anyone else present at this conversation?

A. No, sir.

Q. Will you tell us the entire conversation?

A. Mr. Butler took out a check and handed me the check and said, "Sol, as of this moment you are discharged."

Q. And what did you say, if anything?

A. Well, I asked for an explanation. I told him I did not think it was right that I should be discharged without notice or explanation. Well, Mr. Butler said, "I cannot tell you why." And when I finally pressed him for an explanation, he said, "All

(Testimony of Sol London.)

I can say is that you thought more about other things than you did of the paper.”

I told him I wasn't satisfied with that and he said, “If you want anything else, you will have to see the old man” and I said I would and I left. [394]

Q. When you left what did you do?

A. I went over to my car and started it up and I saw Mr. Oney Fleener walking towards the office. I stopped the car and he came over to the car and I told him——

Mr. Kaufman: Just a moment.

Trial Examiner: Do not tell us what you understood.

Mr. Grodsky: Mr. Examiner, I submit in view of Mr. Fleener's testimony here and in view of Mr. Butler's testimony concerning Mr. Fleener, that this is admissible because it links up with the other two conversations.

Trial Examiner: I don't understand that.

Mr. Grodsky: It just makes for a complete, a more complete story.

Trial Examiner: Well, a lot of things make for a more complete story, but we have certain evidential rules. I am not going to permit the conversation with Mr. Fleener.

Q. (By Mr. Grodsky): How long were you talking to Mr. Fleener?

A. Four or five minutes.

Q. What did you do then?

A. Mr. Fleener left.

Q. What did you do?

A. I drove off.

(Testimony of Sol London.)

Q. Where did you drive to? Did you drive directly to Mr. Smith's house? [395] A. Yes.

Q. And when you got to Mr. Smith's house, did you have a conversation with Mr. Smith?

A. Yes, I did.

Q. Was any one else present?

A. Mr. Butler was present.

Q. How long was it from the time that Mr. Butler had left you at the parking lot until the time when you reached Mr. Smith's house? Give us your best estimate.

A. I should say ten or twelve minutes, sir.

Q. Would you relate the conversation between you and Mr. Smith and if Mr. Butler entered into it, whatever he said too?

A. I introduced myself to Mr. Smith as an employee who had just been discharged and I told him that Mr. Butler said that he, Mr. Smith, would be able to give me the reason why and so I asked Mr. Smith why I was discharged.

Mr. Smith said, "Well, I wasn't satisfied with your political reporting." And I asked him specifically what reporting he was referring to and he said, "Oh, well, just generally speaking."

I asked Mr. Butler why he had not mentioned that to me during the past two weeks and Mr. Butler said that, well, there had been a general deterioration and I told Mr. Smith that I did not think it was right that I should be discharged without notice, after working on the paper for four years and [396] finally Mr. Smith said, "Very well, we will give you

(Testimony of Sol London.)

two weeks' pay instead of notice." And I told Mr. Smith, "You and I both know the reason for my discharge, and Mr. Smith said, "Well, what is it then," and I don't recall my answer exactly.

I said, "Well, we both know what the real reason for my discharge is" and the conversation was over shortly after that and I left Mr. Smith's house.

Q. Had Mr. Smith at any time before the date of your discharge, ever criticized you for your political reporting?

A. I don't think I was ever introduced to Mr. Smith, sir.

Trial Examiner: The question isn't whether you were ever introduced to him. Let us have an answer to the question.

The Witness: No, sir, he did not.

Q. (By Mr. Grodsky): Did any representative of the management of the Herald American at any time before your discharge, criticize your political reporting to you?

A. No, sir, not that I recall.

Q. Did Mr. Butler at any time prior to your discharge, discuss with you any claim that your work was generally deteriorating.

A. No, sir, I do not believe he did, sir. When I first started in the Long Beach paper he mentioned that I should have more two column heads on my front page stories, and I agreed with him.

Q. Did you change your practice after that?

A. Yes. [397]

Q. When did that take place?

(Testimony of Sol London.)

A. August of 1953, shortly after I became editor of the North Long Beach paper.

Q. After you ceased your employment with the company, did you become an employee of the Newspaper Guild? A. Yes, sir.

Q. And in that connection, did you continue to get in touch with the employees of the Herald American? A. Yes, sir.

Q. Did there come a time when union buttons were worn by the employees? A. Yes, sir.

Mr. Kaufman: Now, just a moment. I am going to object to that question on the grounds that it calls for a conclusion of the witness without a proper foundation, and it is vague as to the purported place where the buttons were supposedly worn.

Trial Examiner: Well, of course, thus far the evidence is no more than what the evidence has already shown. I mean this witness' last statement.

Mr. Kaufman: I do not object to what he says he saw.

Trial Examiner: I am going to let this last answer stand.

Mr. Grodsky: It was merely preliminary.

Trial Examiner: I assumed it was and I assumed it goes no further than what has already been shown. [398]

Q. (By Mr. Grodsky): Did you have any discussion with any supervisor in which the wearing of the buttons was mentioned, answer "yes" or "no"?

A. No.

(Testimony of Sol London.)

Q. Do you recall a discussion with anyone in which the question of union buttons came up in any way?

A. Oh, yes, with the employees of the Herald American.

Q. Now, after the time that the employees had put on their buttons, did you have any discussion at that time with any representative of management?

A. Yes, sir; Mr. Cleland.

Q. When did that discussion take place?

A. On a Wednesday, in front of the Compton office of the Herald American.

Q. Who was present at this conversation?

A. Mr. Ross was present at the latter part of the conversation. [399]

* * *

Q. (By Mr. Grodsky): Were there certain kinds of assignments that Mr. Butler covered himself? A. Yes.

Q. And in the event that Mr. Butler wasn't available to cover them and if Mr. Butler was in the office, was it the custom of [402] Mr. Butler, if you observed, that he would make the assignment as to who would take care of that particular assignment?

A. If Mr. Butler was in the office he would do that.

Q. If Mr. Butler wasn't present, then who would make the assignment of the case or meeting that Mr. Butler himself normally covered?

A. Mr. Cleland usually would.

* * *

(Testimony of Sol London.)

Q. (By Mr. Grodsky): Now, returning again to this Wednesday morning when Mr. Cleland and you were talking and Mr. Ross came up, do you know what date or day that was?

A. It was the day after Mr. Ross had been discharged.

Q. And now, will you tell us what was said by either the two of you or the three of you and indicate who was speaking, with reference to union buttons in that conversation? [403]

Mr. Kaufman: Well, just a moment. I am going to object to the conversation on the grounds that it is hearsay and there has been no proper foundation laid.

Q. (By Mr. Grodsky): What time of the day was it?

Mr. Grodsky: I think I have asked that. I will withdraw the question. It has been asked and answered.

Mr. Kaufman: There may be a ruling by the court.

Trial Examiner: Excuse me, I thought you were going to withdraw the question?

Mr. Grodsky: No, no, no.

Trial Examiner: Let us have a few foundational questions. My recollection is that you did, but the record is a little confused.

Mr. Grodsky: I will withdraw the question then.

Q. (By Mr. Grodsky): Now, Mr. London, the record shows that Mr. Ross was discharged on Au-

(Testimony of Sol London.)

gust 17th, that was a Tuesday? A. Yes.

Q. Then the conversation took place on Wednesday, August 18th, in the morning; at what time in the morning? A. Around 7:30.

Q. And where did the conversation take place?

A. In front of the Compton office of the Herald American.

Q. And who was present?

A. Mr. Ross, myself, and Mr. Cleland.

Q. Anybody else? [404] A. No, sir.

* * *

Q. (By Mr. Grodsky): How did it come about that he said it? What was the conversation that led up to it?

Mr. Kaufman: Same objection.

Trial Examiner: I will overrule it.

The Witness: Well, we were talking about the Guild and my being fired and Mr. Ross being discharged and Mr. Ross asked Mr. Cleland if any one had known about his wearing a union button, and Mr. Cleland said, "Yes, it was known in Compton on Tuesday afternoon." [406]

* * *

Q. (By Mr. Grodsky): Do you remember if he said as to what time of the day it was knowledge at the Compton office about the union buttons being worn? What was said and give it to us as best as you can?

A. I believe Mr. Ross questioned Mr. Cleland

(Testimony of Sol London.)

further and Mr. Cleland said it was about 2:00 on the Tuesday afternoon.

Trial Examiner: While you were still employed by the company, was Mr. Ross working in the same office as you?

The Witness: No, sir, Mr. Ross was in the Lakewood office.

Trial Examiner: And Mr. Cleland was in the same office as you?

The Witness: At the time of my discharge I worked in the North Long Beach office. Mr. Ross worked in the Lakewood office and Mr. Cleland worked in the Compton office.

Q. (By Mr. Grodsky): During the time of your employment at the North Long Beach office, did you have any conversation at any time with Mr. Butler concerning working on Thursday afternoons?

A. Yes.

Q. Now did you have one or more than one conversation?

A. Relating to Thursday afternoons. I believe there was only one. [407]

Q. When did that conversation take place?

A. In Long Beach and at Compton.

Q. About when did it take place?

A. Shortly after I became editor of the North Long Beach paper, perhaps about August or September.

Q. Was any one else present in the conversation?

A. No.

(Testimony of Sol London.)

Q. Now, what did Mr. Butler say and what did you say on this occasion?

A. I told Mr. Butler, I believe, that I was working a great number of hours, over fifty hours a week and I told him that I thought I needed, oh, more help at the North Long Beach office, and I also told Mr. Butler because I had been working late on Tuesday nights, I had been taking off on Thursday afternoons.

Q. What did he say, if anything?

A. He said, "I know that as well as you and as long as you turn in your copy, that is all we require." And he said I was doing a good job.

Q. What was your usual practice with reference to working on Tuesdays?

A. Well, Tuesday, I would work to midnight sometimes, and sometimes shortly before midnight, occasionally, and after midnight I would turn in my copy.

Q. That was your usual time—the time you usually worked to [408] on Tuesdays?

A. Yes.

Q. Until about midnight?

A. Well, it varied.

Q. And when did you usually bring in your copy, if you brought in your copy?

A. I would bring in my copy, oh, perhaps about 10:00 or 10:30 but sometimes I would be in Compton—when I first started in North Long Beach, I would work in the evening at Compton after 6:30

(Testimony of Sol London.)

and I would be at Compton all that time, but afterwards I changed my routine.

When I work at Long Beach, I would bring in the copy at 10:00 or 11:00.

Q. You mean in the morning?

A. Tuesday night.

Q. At the times you brought in copy to the office, obviously Mr. Butler was there on occasion?

A. On occasion, he was there, sir.

Q. Estimating now the period of time that you worked at the North Long Beach office, could you give us an estimate of how many times that you came on a Tuesday night and saw Mr. Butler?

A. Oh, probably about ten or fifteen times.

Q. And did he see you on those occasions?

A. Yes, sir.

Q. How do you know he saw you? [409]

A. He greeted me and I greeted him.

Q. (By Trial Examiner): Did anybody ever tell you what your scheduled hours would be at the Long Beach office?

A. No, sir, except that Mr. Butler said I would be required to cover the Long Beach City Council meetings. They met at 8:30 every Tuesday morning and we had a certain make-up deadline.

Q. Did you work on Saturday at the Long Beach office? A. No, sir.

Q. Did anybody else?

A. No, the office was closed.

Q. Do I understand you were the only employee in the office? A. The editorial employee.

(Testimony of Sol London.)

Q. Well, are there any other employees?

A. A classified advertising girl, and two or three circulation—I mean salesmen and a circulation manager.

Q. And when did you normally come in, in the morning?

A. It depended on the day. On Monday, I usually reported in at 9:30; Tuesday, it would be 8:30, Wednesday, I would report in at 8:30 or 9:00; Thursday I would report in at 9:30; and Friday it would be 9:30; Saturday, I would go directly to the Compton office where the make-up was and I usually got there about 6:30.

Q. To what time did you work on Thursday normally?

A. From 9:30 to, oh, 12:30 [410]

Q. Do I understand you usually took the afternoon off on Thursday? A. Yes.

Q. Now, is there a record kept of your time of any kind? Do you punch a clock or anything like that? A. No, sir.

Q. All right. Before we leave the subject of Long Beach, what contact, if any, did you have with Mr. Cleland?

A. Well, we phoned one another regarding certain stories that Mr. Smith would want and I would also phone up the office. The library of the paper was kept in the office and I would ask somebody to see if we had a zinc cast of a certain person.

Q. I don't know what you mean by, "we phoned

(Testimony of Sol London.)

one another regarding certain stories." Did you tell one another stories?

A. He phoned me about certain things. At one time in North Long Beach, Grayson had a dedication case and Mr. Cleland told him he was handling that story and I was to have it on the first page heads.

Q. Tell me about some other stories that he phoned you about?

A. If there were any angles from Compton that involved North Long Beach about a story, Mr. Cleland would phone me to tell me about it, say a police story. If a North Long Beach man was involved in an accident, Mr. Cleland would phone me up about it, and I would run it in the North Long Beach edition.

Q. Now, was there any occasion when he told you that he did [411] not have it?

A. Oh, yes, sir.

Q. Then what did you do?

A. I would probably handle the story myself or I would find out from Mr. Cleland when he would have that story available.

Q. Do I understand that when you were in the North Long Beach office, aside from what Mr. Butler would tell you about covering a news story, you would dig up the news stories and cover them; is that correct?

A. Yes, sir.

Q. Now, how long were you in North Long Beach?

(Testimony of Sol London.)

A. Approximately one year I was at the North Long Beach office.

Q. Was it any part of your duty while you were at North Long Beach to find out where the news stories were cooking, so to speak?

A. Well, I had certain contacts. Also, I would check with the Police Department and the City Hall, and there was a civic drive in North Long Beach and I covered that. It concerned the establishment of a civic center in North Long Beach.

Q. Did you have any regular or standard news stories—I am referring particularly to the Police Department?

A. I would receive the information from the Police and if I needed further information, I would check with the detectives. We emphasized a good deal of crime and accidents. Occasionally [412] there was a murder story or a man killed his wife and I covered that by checking with the court clerks.

Q. And when Mrs. Marian Jones married off her daughter, she would get in touch with your newspaper and tell you?

A. We would receive society notes but I sent these to the Compton office. I turned these over to the society editor when I got them over the [413] phone.

* * *

Q. (By Mr. Grodsky): Mr. London, in preparation for your career as a journalist, did you have any journalistic schooling? A. Yes, sir.

Q. Did you attend a professional school?

(Testimony of Sol London.)

A. I attended the University of California.

Q. Did you take courses in journalism?

A. Yes, sir.

Q. In connection with these courses, did you read any material relating to what are syndicated features?

A. Yes, sir.

Q. And did you learn from your schooling, criteria by which certain syndicated features can be identified?

A. Yes, sir. [414]

* * *

Q. (By Mr. Grodsky): In your work in the newspaper business, have you had any occasion to deal with syndicated material?

A. I have observed syndicated material and I don't quite understand—

Q. Has any of it come across your desk in the course of your duties, that you can remember?

A. We receive releases from the United Press.

Q. That isn't syndicated cartoons, is it?

A. No, sir.

Q. Then, I take it that you have never personally worked with any material of the character of syndicated cartoons?

A. Often in the mail we would receive letters from syndicates asking the paper to subscribe to certain feature cartoons and I would glance through the material enclosed.

Q. And in that way you became aware of what type material syndicates offer?

A. Yes, sir.

Q. And was it one of your duties to open the mail at the time in question?

(Testimony of Sol London.)

A. Yes, sir, at Compton. [419]

Q. And did the syndicated material which you are now testifying about, which came over your desk, conform to the description of what you told us you were taught in school as to what are the usual characterizations of syndicated material?

A. Yes, sir. [420]

* * *

Redirect Examination

* * *

By Mr. Grodsky:

Q. Now, during the time when you were at Compton and you [432] handled the mail, did any material from United Press come across your desk?

A. Yes, sir.

Q. What, if anything, did you do with it?

A. Well, opened the mail and I questioned as to who should receive that material.

Q. Whom did you ask it off?

A. I believe Mr. Cleland or Mr. Butler.

Q. Do you remember which one it was?

A. No, not offhand.

Q. What were you told to do with that mail?

Mr. Kaufman: I am going to object as he cannot identify the people as to who it was. If he cannot identify the people, I am going to object to any instructions that he purportedly received.

Trial Examiner: I am not sure that I agree to this. I think his testimony is susceptible of an inference that one of two people were concerned.

(Testimony of Sol London.)

Mr. Kaufman: Well, if Mr. Cleland gave the instructions, it isn't a proper showing.

Trial Examiner: Oh, I am sure there is. I will overrule the objection.

Q. (By Mr. Grodsky): What were you told to do with that mail?

A. Give it to "Home & Garden." [433]

Q. What do you mean when you say "Home & Garden"?

A. Put it in the place in the office where all the "Home & Garden" material was to go.

Q. Is the "Home & Garden" material similar to a magazine incorporated in General Counsel's Exhibit No. 3 for identification? A. Yes. [434]

* * *

(The document heretofore marked General Counsel's Exhibit No. 3 for identification, was received in evidence.) [436]

* * *

Recross-Examination

By Mr. Kaufman:

Q. Mr. London, I believe that you had previously told me that you put in a pretty full day in the newspaper during the years that you had worked there; is that right? A. Yes, sir.

Q. And it was a job that kept you busy from the time you started in the morning until the time you would quit? [437]

(Testimony of Sol London.)

A. Yes.

Q. And on Tuesdays you would have to work late at nights; isn't that right?

A. Yes, sir.

Q. Now, in connection with the Tuesday, if you finished your work early on Tuesday, you went home when you finished, didn't you?

* * *

Q. (By Mr. Kaufman): I take it you never finished early and therefore could not go home early on a Tuesday night?

Mr. Grodsky: I object to that as being vague and indefinite.

Trial Examiner: Well, I will permit it; is that correct?

The Witness: Well, I don't know what he means by "early."

Trial Examiner: Do I understand that you don't understand [438] the question?

The Witness: I don't understand the use of one word in the question, "early."

Trial Examiner: All right, "early."

Q. (By Mr. Kaufman): Sometimes you said you finished as late as 2:00 in the morning on a Tuesday? A. I said after midnight.

Q. Have you ever finished as early as 10:00?

A. Yes, sir.

Q. 9:00? A. I don't recall.

Q. 8:00? A. No, I never have.

Q. And the rest of the time that you were there,

(Testimony of Sol London.)

you considered you had a fulltime job? The job took you full time to adequately cover it, especially when you were at the Long Beach office?

A. Yes, sir.

Mr. Grodsky: I object to it as compound.

Mr. Kaufman: Well, strike the question.

Q. (By Mr. Kaufman): You were in the Long Beach office when you were fired? A. Yes.

Q. And when you were in that office in particular, I believe you were the only man covering editorial news; is that [439] correct? A. Yes.

Q. And as such, besides putting a great deal of time on your work, you worked very, very hard, so that you requested additional help at one time; isn't that correct? A. Yes.

Q. Now the reason that you requested additional help was so that you could more adequately and better cover the news that you were writing?

A. That is one of the reasons.

Q. Now when did you start your work with the union, sir?

A. Oh, I believe it was in the latter part of April.

Q. And at that time you were not as you are now, drawing any salary from the union, were you?

A. I was drawing no salary from the union.

Q. In April when you first started, what did you start to do?

A. As far as the union is concerned?

Q. Yes, certainly.

(Testimony of Sol London.)

A. We signed up a number of people on the Guild application cards. [440]

* * *

Q. (By Mr. Kaufman): Is it your testimony here in this court room that you never at any time contacted any of the other employees during their duty hours, when you were organizing the Compton Herald American or any other Herald American newspaper? [442]

* * *

The Witness: There were certain times of the day when an employee might be called at work but he would be off on the lunch break or the coffee breaks.

Mr. Kaufman: Now, would you answer my question?

The Witness: Yes, during a lunch hour and coffee breaks.

Q. (By Mr. Kaufman): Now, did you at any time not during the lunch hour or coffee breaks contact any of the employees with the purpose of discussing the union? A. I don't recall.

Q. You don't remember any?

A. I don't recall any at this time.

Q. Would you say that you had not?

A. I could not say definitely that I had not.

Q. Did the people have a fixed hour for coffee breaks? A. Not necessarily.

Q. Well, what would you do? Did you see them out of their [443] working hours and quit what you were doing and meet them when you had a coffee

(Testimony of Sol London.)

break? A. We often had coffee together.

Q. Did you plan that?

A. No, a person doesn't like to have coffee by himself.

Q. But you were the only one at the Long Beach office; you came to other offices to do your organizing?

A. I never went to other offices to do any organizing while I was an employee of the Herald American.

Q. You did not?

A. Not to actually organize.

Q. Well, to attempt to get people to join the union? A. Not in the office itself.

Q. But you went into the offices and you talked to people for that purpose?

A. I may have spoken to people but it was outside of the work and I did not go to a specific office to ask a person to join the Guild.

Q. How many people during this time you were still employed by the Herald American did you talk to about joining the Guild?

A. Well, I don't want to involve any one by giving the names of these people.

Q. I am not asking you for any names.

Trial Examiner: Just listen to the question, Mr. London. [444] He wants an approximation. If you cannot give the exact number——

The Witness: I would say about seven or eight people.

(Testimony of Sol London.)

Q. (By Mr. Kaufman): And you talked to them, oh, more than once naturally?

A. On occasions.

Q. Wouldn't it be fair to say that the conversations were more than one minute or two in duration? A. Yes.

Q. Actually, when you would talk to a man about union activities or a woman, you would not be performing your paid for task, would you?

A. It would depend on when I was talking about the union activities, sir.

Q. Well, when you came into the local office from the Long Beach office, you normally had a reason, had you not? A. Yes, on make-up days.

Q. Or on other days?

A. Well, it would be in reference to something about the paper.

Q. And normally you would try to get back as fast as you could because you were overworked and you had to be back on the job?

A. That isn't exactly correct. On make-up days, Wednesday, I would get to the Compton office and then I would turn in the [445] copy I had and then I would make up. And after that, I would go home. On Saturday it was about the same.

Q. One conversation you testified to took place on a Tuesday, didn't it?

A. Yes, I was at the Compton office off and on to turn in my copy.

Q. Well, this could have taken place on a Tuesday? A. I cannot say that.

(Testimony of Sol London.)

Q. You could have had conversations which took place on a Tuesday? A. It is possible.

Q. While you were having these conversations, nobody was in the Long Beach office covering your job? A. It wasn't necessary.

Q. I said, nobody was in the Long Beach office covering your job while you were having these conversations, were they? Just answer the question, please.

A. I cannot answer that by a "yes" or "no" answer, sir, without an explanation.

Q. Was any one in the Long Beach office covering your job, when you were having these conversations? That is, when you were over in Compton.

A. I was the entire staff of the Long Beach editorial staff.

Q. Now, when you were attempting to organize for the union for these several months, did you at any time contact Mr. [446] Butler and ask him to belong to the union?

A. No, sir, I did not.

Q. Because you knew he was management; is that correct? A. One of the reasons.

Q. Well, they told you and you acting as an organizer, knew that you could not contact management?

A. Well, for one thing, we knew definitely that Mr. Butler was part of management and——

Mr. Kaufman: All right.

Mr. Grodsky: Let him finish his answer.

(Testimony of Sol London.)

Mr. Kaufman: It wasn't responsive.

Trial Examiner: Well, if it wasn't responsive, I think the thing to do is to move to strike the unresponsive question or ask me to strike the answer.

Mr. Kaufman: The witness has a tendency of being unresponsive and more so than the average witness.

Mr. Grodsky: I object to that.

Trial Examiner: I will tell this witness. Your obligation is to answer a question and not go beyond that. It isn't necessary for the witness to play lawyer. Just answer the questions and do not go beyond them.

The Witness: Yes, sir.

Trial Examiner: Go ahead, sir.

Mr. Kaufman: Could I have the last question read, please? [447]

(Question read.)

The Witness: I realized that top management would be out.

Q. (By Mr. Kaufman): Do I take it there, sir, that you are endeavoring to make a distinction between management and top management for this record? A. No, sir, I am not.

Q. Then why use the word "top"?

A. Well, Mr. Butler is very close to Mr. Smith, that is the main reason.

Q. Isn't it also true that you knew you did not organize management and that is why you didn't see Mr. Butler; isn't that true? A. Yes.

(Testimony of Sol London.)

Q. It was or otherwise? A. Yes.

Q. Now, one of the men you did attempt to organize is a Mr. Cleland? A. Yes.

Q. And when you saw Mr. Cleland, I believe you testified your first discussion was on a Tuesday?

A. I believe I first discussed this with Mr. Cleland on a Saturday.

Q. Well, you had one discussion, I believe, that you said was on July 10th; would that be a Saturday?

A. Yes, sir, to my recollection it was [448]

Q. Did you ever have a discussion with Mr. Cleland not on a Saturday?

A. Yes sir, on the Wednesday following that Saturday.

Q. During the time you had this discussion with Mr. Cleland, I believe you stated you were on your way to or from a coffee break?

A. On Saturday July 10th.

Q. About what time of the morning was it?

A. After I had completed the make-up on Saturday.

Q. What time of the morning?

A. Between 11:00 and 12:00.

Q. Didn't you say before it was around 11:00?

A. I don't recall.

Q. You recall very clearly that you had finished the make-up? A. Yes, sir.

Q. Do you know if Mr. Cleland finished his make-up? A. He wasn't making-up then.

(Testimony of Sol London.)

Q. Do you know if he had finished entirely for the day?

A. I don't know if he had finished for the day.

Q. How long were you in the coffee shop?

A. Five or ten minutes.

Q. And when you were talking, Mr. Cleland went back to work, you testified didn't you?

A. Yes, sir.

Q. Now, sir, do you usually finish your work by 11:00 [449] o'clock on a Saturday morning?

A. It varied. [450]

* * *

Recross-Examination

(Continued)

By Mr. Kaufman:

Q. Mr. London, did you do any soliciting or attempted soliciting by telephone at all?

A. I made appointments by telephone.

Q. I am talking now if I may, and I should redirect this question to you during the period you were employed by the Herald American or by the newspaper; did you make appointments by telephone? A. Yes, I believe I did.

Q. And for that you used the company telephone; is that correct?

A. I believe I did, yes, sir. [454]

* * *

(Testimony of Sol London.)

Redirect Examination

By Mr. Grodsky:

Q. Mr. London, you testified that you worked Tuesday nights until time after 9:00 p.m. roughly speaking? A. Yes, sir.

Q. Now, have you reconsidered that testimony since you gave that testimony and do you have any change to make?

A. I would like to qualify that testimony I gave this morning. On occasion, I would take work home and type out the stories at home Tuesday night after 8:00 o'clock and I brought the copy in later.

Trial Examiner: You brought it in later; do you mean at night?

The Witness: No, the next morning, sir. [469]

Q. (By Mr. Grodsky): And on those occasions, you would leave the office by when?

A. I should say about 8:00.

Q. And about how frequently during the year when you were at Long Beach did this happen?

A. Oh, six or seven times, sir.

Q. Now, in response to a question by counsel, you said that one of the reasons why you did not ask Mr. Butler to join the union was because you knew that he was part of management? A. Yes, sir.

Q. Did you have any other reasons in mind why you did not ask Mr. Butler to join the union?

A. Yes, sir, I did.

(Testimony of Sol London.)

Q. Can you tell us what the reasons are?

Mr. Kaufman: I am going to object as it is irrelevant, immaterial and incompetent and not proper redirect examination.

Trial Examiner: I will overrule the objection.

The Witness: While I worked at Compton, Mr. Butler made a lot of anti-union statements and I was led to believe that he was very strictly anti-union.

Q. (By Mr. Grodsky): You testified in response to a question that you used the phone to make appointments with reference to your union activity, your union organizing; do you remember that testimony? A. Yes, sir. [470]

Q. Will you explain how you happened to use the phone; in other words, were you making the call specifically for that purpose or was it in another fashion?

Trial Examiner: Mr. Grodsky, do not lead the witness. I know you are not doing it intentionally but the end result is the same, I think.

Mr. Grodsky: I am sorry.

Mr. Kaufman: I will stipulate that he will answer he was doing it on——

Mr. Grodsky: I don't know what his answer is.

Trial Examiner: Let us have an answer. I have no objection to the question and I am constrained to complete the record please. Go ahead, sir.

The Witness: Would you repeat the question, please.

Mr. Grodsky: I will rephrase it.

Q. (By Mr. Grodsky): How often do you re-

(Testimony of Sol London.)

call did you make appointments by telephone with reference to solicitations?

A. Not more than two times a week.

Q. And will you tell us what nature these calls were, without giving us any names?

A. It may have been in reference to news stories or matters concerned with the paper and I also brought in the fact that I would like to see the party some time.

Q. When you said you spent a considerable amount of your time in that period in union organizational work—— [471]

Trial Examiner: He did not so testify. That was Mr. Kaufman's characterization. The witness said he did not know what he meant by a considerable amount of time and he testified, "I spent time on it."

Mr. Grodsky: All right.

Trial Examiner: Go ahead, sir.

Q. (By Mr. Grodsky): Now, Mr. London, when did you start taking your Thursday afternoons off?

A. Shortly after I became editor of the North Long Beach Herald American.

Q. When you became editor, did you have occasion to discuss your duties with a man who preceded you in the position? A. Yes.

Q. What was his name?

A. John Bevill.

Q. Did you discuss his working hours with him?

A. Yes, sir. [472]

(Thereupon the document heretofore marked General Counsel's Exhibit No. 16 for identification, was received in evidence.) [487]

* * *

GENERAL COUNSEL'S EXHIBIT No. 16

Payroll Records of Salaries Paid the Following
Employees Previous to July 18, 1954

5. The payroll records disclosing names and classifications of all editorial employees, classified advertising solicitors, PBX operators, and cashiers on and at all times after March 1, 1954.

Editorial:

Jack Cleland, City Editor, \$110.00;
W. L. Sheets, Division Editor, \$85.00;
Oney Fleener, (Transferred), \$80.00;
Jean Jolley, Norwalk Editor, \$75.00;
Laurence Moshier, Bellflower Editor \$75.00;
John Echeveste, Reporter, \$75.00;
Helen Farlow, Society Editor, \$65.00;
Sol London, Long Beach Editor, \$75.00;
Jerome Syverson, Downey Editor, \$60.00;
Doris Zerby, Reporter, \$55.00;
Anthony Derry, Reporter, \$65.00.
Mary Jo Clements, Magazine Editor, \$65.00;
Norma Montgomery, Reporter, \$60.00;
Marion Mattison, Society Editor, \$55.00;
Barbara Heath, Society Editor, \$50.00;
William Edmond, Reporter, \$60.00;

Howard Handy, Part-time Sports Editor,
\$37.00;
Maxine Galt, Society Editor, \$50.00.

Classified:

Leonard Lugoff, Classified Manager, \$125.00;
Robert Raschdorf, Classified Sales, \$90.00;
Franklin Marshall, Classified Sales, \$80.00;
Dorothy Bush, Classified Sales, \$90.00;
Dorothy Holt, Classified Clerk, \$70.00;
Virginia Streeper, Telephone Sales, \$62.50;
Andrea Olson, Telephone Sales, \$62.50;
Ruth LaFave, Telephone Sales, \$62.50;
Elizabeth Herb, Telephone Sales, \$62.50;
Dale Neumann, Telephone Sales, \$62.50;
Marie England, Telephone Sales, \$65.00;
Barbara Baker, Telephone Sales, \$67.50;
Katherine Grant, Telephone Sales, \$70.00;
Virginia Fletcher, Classified Counter, \$50.00;
Bertha Reid, Telephone Sales, \$62.50;
Gloria Hickey, Telephone Sales, \$62.50.

Cashiers & PBX:

Ellen Beetler, General Cashier, \$75.00;
Beatrice Kirschner, Cashier & PBX, \$60.00;
Erma Whertley, Cashier & PBX, \$57.50;
Doris Farley, Cashier & PBX, \$55.00.

6. Name and date of employment of all editorial employees employed after March 1, 1954.

Earl Griswold, October 11, 1954, \$80.00;

Carl Widner, September 2, 1954, \$70.00;
Raymond Ross, March 22, 1954, to August 17,
1954, \$65.00;
Barbara Heath, Feb. 15, 1954, to June 11, 1954,
\$50.00;
Donald Desfor, May 29, 1954, to Sept. 4, 1954,
\$60.00;
Arnold Collins, Aug. 9, 1954, to Aug. 17, 1954,
\$65.00.

7. Name and date of termination of all editorial employees terminated after July 1, 1954.

Raymond Ross, Aug. 17, 1954;
Sol London, July 16, 1954;
William Edmond, Aug. 18, 1954;
Donald Desfor, Sept. 4, 1954;
Arnold Collins, Aug. 17, 1954.

8. Name and date of employment of all classified advertising solicitors employed after March 1, 1954.

Edith Zink, July 13, 1954, \$57.50;
Dorothy McGuire, July 12, 1954, \$65.00;
Lucille Pfershy, July 14, 1954, \$55.00;
Mary VanAllen, March 29, 1954, \$62.50;
Patricia Beck, May 25, 1954, \$62.50;
Gloria Hickey, April 12, 1954, \$62.50.

9. Name and date of termination of all classified advertising solicitors terminated after August 1, 1954.

Gloria Hickey, Aug. 17, 1954.

10. Names and date of employment of all PBX operators and cashiers after June 15, 1954.

Helene Larson, June 14, 1954, \$60.00;

Doris Farley, June 28, 1954, \$55.00;

Fayette Petty, Sept. 1, 1954, \$57.50;

Marion Cronk, from part to full time Aug. 30, 1954, \$50.00.

11. Names and dates of termination all PBX operators and cashiers after August 1, 1954.

Helen Larson, Aug. 27, 1954;

Doris Farley, Aug. 17, 1954.

12. A list of all pay increases and bonuses given to editorial employees and classified employees from July 1, 1954, to date, listing the name of employee, date of increase or bonus and amount of increase or bonus.

Jack Cleland, July 18, 1954, \$15.00;

William Sheets, July 18, 1954, \$15.00; Aug. 22, 1954, \$25.00;

Jean Jolley, July 18, 1954, \$10.00;

Raymond Ross, July 18, 1954, \$5.00;

Laurence Moshier, July 18, 1954, \$5.00; Aug. 29, 1954, \$10.00;

John Echeveste, July 18, 1954, \$5.00; Aug. 22, 1954, \$10.00;

Helen Farlow, Oct. 24, 1954, \$5.00;

Doris Zerby, July 18, 1954, \$10.00;

Elaine Marable, July 18, 1954, \$10.00;

Jerome Syverson, July 18, 1954, \$15.00; Aug. 29, 1954, \$5.00;
 Anthony Derry, July 18, 1954, \$10.00; Aug. 29, 1954, \$5.00;
 Mary Jo Clements, July 18, 1954, \$10.00;
 Marion Mattison, July 8, 1954, \$10.00;
 William Edmond, July 18, 1954, \$15.00;
 Florence Francoeur, Aug. 29, 1954, \$5.00
 (Proofreader).

Received in evidence December 9, 1954.

LOUIS M. MURRAY

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kaufman:

Q. Mr. Murray, what is your business or occupation? A. Advertising.

Trial Examiner: Could we have the witness' name and address, please?

Q. (By Mr. Kaufman): Would you state your name, please? A. Louis M. Murray.

Q. And your address?

A. 3203 Josie, Long Beach.

Q. What is your business or occupation?

A. Advertising.

Q. By whom are you employed, sir?

A. Herald American. [490]

(Testimony of Louis M. Murray.)

Q. Now, sir, did you ever attempt a surveillance of what you believed to be a union meeting on or about July 17, 1954, or any other time?

A. No.

Q. Were you ever asked by any of your superiors of the newspaper for which you were employed to make or attempt to make any such surveillance?

A. No.

Q. Do you know a Mr. Sheets?

A. Yes, sir.

Q. Did you ever go to his home in connection with a so-called horse-shoe incident? A. Yes.

Q. Would you tell me, please, the circumstances surrounding this?

A. For a number of years, I have known Sheets, three or four years, and he has had a liquor problem and I overheard him make a remark that he was going to play horseshoes which to me was synonymous to opening a keg of nails, and for that reason I tried to locate Sheets in the afternoon, and talked to his wife, and later on, he, himself and I determined that he was sober and that satisfied me that the old problem did not recur.

Q. Did you ever tell him that you were checking to see if he was engaged in a union meeting? [491]

A. No.

Q. Or that you thought horse-shoes was some type of word with the understanding that it meant a union meeting or anything like that?

A. Just prior to that time, Bill had just moved into a new house and knowing his customary habit

(Testimony of Louis M. Murray.)

over a long period of time, I knew that he did not play horse-shoes.

Q. Did you ever see any employee, and I am calling your attention particular to either Ray Ross, Gloria Hickey, Doris Farley, wearing a union button on or about the 16th, 17th or 18th of August, 1954, in the offices of the Compton Herald American? A. The dates I cannot—no.

Q. Can you tell me whether or not you fired any of those people? A. No.

Q. Neither Gloria Hickey nor Farley?

A. No.

Q. Was Gloria Hickey in your department?

A. No.

Q. Was Doris Farley? A. No.

Q. Did you take a check on the morning of the 18th of August to Miss Farley?

A. Yes. [492]

Q. And was Miss Farley in your department?

A. No.

Q. Who had instructed you to take that check over?

A. I was simply asked to deliver the check.

Trial Examiner: The question is, who asked you?

The Witness: I am not clear on that.

Q. (By Mr. Kaufman): You just remember you brought it over? A. That is right.

Q. She wasn't in your department, is that right?

A. That is right.

(Testimony of Louis M. Murray.)

Q. Did you ever discharge any one for union activities? A. No. [493]

* * *

LEONARD LUGOFF

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Kaufman:

Q. What is your full name?

A. Leonard Lugoff.

Q. What is your business or occupation?

A. Classified advertising.

Q. Who is your employer?

A. Herald American.

Q. How long have you been so employed?

A. Oh, going on fifteen years.

Q. Are you in charge of any department?

A. Classified advertising.

Q. Did you ever receive orders from any of your superiors to fire anyone because of union activities? A. No, sir.

Q. Did Colonel Smith or Mr. Brewer or Mr. Butler ever give you any orders to fire anybody because of union activities? A. No, sir.

Q. I take it that no one in the organization above you gave you any orders?

A. That is right.

Q. Do you remember a Mrs. Hickey?

(Testimony of Leonard Lugoff.)

A. She worked in my department. [503]

Q. Did you ever fire a Mrs. Hickey?

A. I did.

Q. Did you ever fire her because of any union activities? A. No, sir.

Q. What was the purpose of her being discharged?

A. I was given instructions to cut down by one in my department for economy reasons, and after due thought I let Gloria Hickey go.

Q. Whose department was Doris Farley in, do you know?

A. I think she was directly under——

Q. Mr. Brewer? A. Mr. Brewer.

Q. In any event, the only one you fired was Gloria Hickey; is that right?

A. That is right.

Q. Did you ever tell Mrs. Hickey prior to her being fired at any time that you were glad she wasn't tied up with the Guild? A. No, sir.

Q. Did you ever question her as to any Guild tie-up? A. No, sir.

Q. Did you ever tell her that Colonel Smith had given instructions or would fire everyone in the whole department if he did not learn who was the person organizing?

A. Colonel Smith never discussed unionism with me in any way, [504] shape or form.

Q. Did you ever tell her that? A. No.

Q. Did you ever tell any other employee that?

A. No.

(Testimony of Leonard Lugoff.)

Q. That Colonel Smith had told you——

A. No.

Q. I don't know whether I have asked you this or not. I may be repeating myself. Did you ever question any employee as to whether or not they had a union affiliation? A. No, I did not.

Trial Examiner: By the way, who told you to discharge an employee?

The Witness: The cut-back economy measure was instituted by Colonel Smith and told to me by Mr. Brewer.

Trial Examiner: I take it, it was Mr. Brewer who told you to discharge an employee?

The Witness: Yes, to cut down one employee.

Trial Examiner: Prior to the time that you discharged any one, did you see any one wearing a union button?

The Witness: No, I did not and to be perfectly frank, I would not recognize a union button if I was shown one.

Mr. Kaufman: Nothing further.

Cross-Examination

By Mr. Grodsky:

Q. Mr. Lugoff, weren't you formerly a [505] Guild member? A. Yes.

Q. Didn't you have a union button?

A. It was so long ago I don't remember having a union button.

Q. Now, the evidence in this case discloses that Gloria Hickey was—oh, strike that. Do you recall—

(Testimony of Leonard Lugoff.)

strike that again. Do you remember when you discharged Gloria Hickey? A. I do.

Q. What day or date was it, if you recall?

A. Approximately I think about the middle of August. I don't know the exact date. It was in the earlier part of the week. She was supposed to be let go that week and we gave her three or four days leeway on it and we paid her to the end of the week.

Q. How long before?

Trial Examiner: You paid her to the end of the week, you said?

The Witness: And let her go on Tuesday.

Trial Examiner: Why didn't you let her stay until the end of the week?

The Witness: Well, when you let a person go, you give them time to look for another job. It is very seldom that you keep a person working to the end of the week. That is courtesy on the part of the management.

Q. (By Mr. Grodsky): When, in terms of the time that you [506] discharged Mrs. Hickey, when before that did Mr. Brewer tell you that you would have to discharge an employee?

A. That was taken up, as I recall, in the latter part of the preceding week, and it was up to me to determine from my employees who I was to let go.

Q. Could you give us a more definite time? You told us Mrs. Hickey's last working day was on a Tuesday. A. That is right.

(Testimony of Leonard Lugoff.)

Q. The record here will show that that particular date was Tuesday, August 17th.

A. All right.

Mr. Kaufman: Alleged in the complaint is August 18th. Is that an error?

Mr. Grodsky: No, Mrs. Hickey said she was told about it on the 18th, in the morning.

Mr. Kaufman: I thought you said Tuesday was August 18th?

Mr. Grodsky: Tuesday was the 17th.

Trial Examiner: General Counsel's Exhibit No. 6 prepared by the company shows the termination date of August 17th. The evidence of both Mrs. Hickey and Mrs. Farley is that they were told they were discharged on August 18th. I don't believe it makes very much difference.

Mr. Kaufman: I don't believe it makes any.

Mr. Grodsky: No.

Trial Examiner: But I think the witness might assist [507] himself by looking at a 1954 calendar. Here is a calendar that may help you with the question that Mr. Grodsky asked you.

The Witness: It was in the morning but I honestly don't know whether it was Tuesday or Wednesday.

Trial Examiner: Here is August 17th, 1954, which is on a Tuesday and the 18th was on a Wednesday, and Mr. Grodsky was talking, I believe, about the preceding week and so were you and here is the calendar.

(Testimony of Leonard Lugoff.)

The Witness: I recall a little bit better now. I called Gloria up on a Tuesday late and she said—well, I didn't want to interrupt her work of the company by calling earlier, and she said she could not wait to see me but she said she would see me in the morning.

That was Wednesday morning, but I was going to tell her about the termination on Tuesday night.

Q. (By Mr. Grodsky): Did she have regular hours? A. Yes.

Q. What were those hours?

A. 8:30 to 5:00, week-days.

Q. Do you know what time of the day on Tuesday or night, this telephone call was?

A. Around 5:00.

Q. Did you telephone her or did she telephone you?

A. I telephoned her that I would like to have her stand by as I was coming down to see her. [508]

Q. Could it be that she telephoned you to give her line count?

A. It could be because she does that.

Q. Could it be that the call was at 6:00 o'clock approximately?

A. I don't think so because she never phones it up that late.

Q. The question is whether on this day in question, she did work that late?

A. I don't recall.

Q. Do you have any positive recollection either way?

(Testimony of Leonard Lugoff.)

A. No, except that it was near the termination of the day, and she had to go to see her husband and she just couldn't wait.

Q. How long before that had Mr. Brewer given you instructions to discharge an employee?

A. The latter part of the preceding week.

Q. Looking at the calendar now, will you give us the best approximation of that date?

A. I would say either the 13th or the 14th of August.

Q. And what did Mr. Brewer instruct you to do?

A. He said there was an economy measure going on and that I had to lay off one person in my department. He did not tell me which person it was.

Q. He didn't tell you which person to let go?

A. No. [509]

Q. Did he tell you when you had to lay off a person? A. Yes, he did.

Q. Did he give you a deadline? A. Yes.

Q. What was the deadline?

A. The following week.

Q. How did you happen to select Mrs. Hickey for the layoff?

A. Well, she had been working four months. She started in April and terminated in the middle of August. When she came to me, she came very poorly recommended and I took a chance on her and during the time that she worked there, there was a lot of friction that I wasn't getting from other girls and because of that friction, I decided that she was the girl to go.

(Testimony of Leonard Lugoff.)

Q. With whom was that friction, do you recall?

A. Just between myself and her. Every time I corrected her, for example, she took it personally that I was picking on her and there was just incompatibility there that I did not get from the other people in the department.

Q. (By Trial Examiner): Were you in the office on Monday? A. Of that week?

Q. The day before August 17th?

A. At the Bellflower office where she worked?

Q. Yes. A. Yes.

Q. Was she? [510] A. Yes.

Q. And was she there all day?

A. Yes. One day I called up the switchboard girl and asked for Gloria, and she said she was on her ten-minute coffee break, but she took about an hour.

Incidentally I got a report previously from somebody that she was shirking her work.

Q. May I suggest, sir, that we are talking on the question of whether a certain person was in the office on a certain day. A. She was there, yes.

Q. Were you in the office on Tuesday 17th?

A. No.

Q. You were absent on the 17th?

A. I was at the Compton office, not in the Bellflower office.

Q. Was she at the Compton office at all?

A. No, she was in the Bellflower office at all times.

Q. Do you recollect whether you had occasion to

(Testimony of Leonard Lugoff.)

talk to the Bellflower office on Tuesday?

A. Oh, yes.

Q. I take it she called you from the Bellflower office when she called you on Tuesday?

A. Yes, before she left. They had a habit of calling me and giving me their lines, so that at that time, I wanted her to wait.

Q. Had you spoken to her earlier that [511] day? A. Yes.

Q. On the telephone? A. Yes.

Q. Once?

A. Probably several times. A great many things come up in relation to their work and I have to phone them there many times. She was on the job on Tuesday.

Q. I want you to think back a little bit and perhaps you can refresh your memory whether you called Mrs. Hickey on Tuesday when this conversation occurred about 6:00 or the following day?

A. To be perfectly frank with you, I don't know whether I called her or she called me, but the conversation took place as part of a conversation.

Q. I understand you have no recollection of calling her at all?

A. The only thing I recollect is I wanted to let the girl go that particular night. Now, ordinarily I would not call her except for something specific. She would call me up and give her lineage report. Now, I may have called her because of some question on that.

(Testimony of Leonard Lugoff.)

Q. Did you have any friction with her on Monday or Tuesday?

A. No, no particular friction on any particular day. It was just a thing that had been going on.

Q. Had you any friction on Monday or Tuesday?

A. No, there wasn't any more friction than on any other day [512] during the time she worked there.

Q. I simply wanted to know if you had any friction with her on Monday or Tuesday?

A. I don't recollect.

Q. Was it because of any friction on Monday or Tuesday that entered into your decision to discharge her? A. No, it wasn't.

Q. (By Mr. Grodsky): Now, you testified in part that she came poorly recommended?

A. Yes.

Q. In what way was she poorly recommended?

A. She came from the Norwalk Call. I asked Miss Donovan what type of girl she was. She said she was very disappointed with her. She said she had a nice appearance but she took advantage of her job and wasn't as good in soliciting as she should have been.

Q. Did you know whether she had any prior experience before working in the Norwalk Call?

A. Yes, the San Diego Union.

Q. Is that a daily paper? A. Yes.

Q. In San Diego? A. Yes.

(Testimony of Leonard Lugoff.)

Q. Do you know whether or not that paper has a union contract? [513]

A. I honestly don't know whether they have or they haven't.

Q. In point of time, after Mr. Brewer told you that you would have to let someone go, did you make a decision that Mrs. Hickey would be the one that you would let go?

A. Over the week end.

Q. In other words, by Monday morning when you came to work, then you had already in your mind, you had made up your mind that Mrs. Hickey was going to go?

A. Yes.

Q. Is there any particular reason why you selected Tuesday night to notify her?

A. Yes, I wanted to give her a break to look around for another job but I did not want to hurt the company in the meantime. Monday and Tuesday are very busy days and if she had been let go on Monday, I would have had to put a new girl on that particular job, which would cut the lineage and so forth.

Q. You testified that you had had reports at previous times that she was shirking her work?

A. I had one previous time and I didn't pay too much attention to it until I called two or three days after and she had been out on her ten-minute coffee break for one hour.

Q. From whom did you have that report?

A. The previous switchboard operator who was

(Testimony of Leonard Lugoff.)

working down there before Doris Farley worked there.

Q. Did you talk to Mrs. Hickey about her shirking her work? [514] A. I certainly did.

Q. (By Trial Examiner): By the way, who did, if anybody did, take over Mrs. Hickey's work on the following Monday and Tuesday?

A. I moved the girl from the Lakewood office and combined the work of the two offices. I did that some Wednesdays. In other words, I called up the girl at Lakewood. And then I told Mrs. Hickey I wanted to see her.

Q. Do I understand that it would not have been necessary for you to hire somebody else; is that right? A. That is right.

Q. To do Mrs. Hickey's work on Monday?

A. That is so.

Q. But you didn't—

A. I didn't want to put a new girl on that particular job. I did want to give Mrs. Hickey a break, and I didn't want to hurt the company and so she was paid to the end of the week.

Q. By a "new girl" do you mean a newly hired girl or a girl from another territory?

A. A girl from another office, yes.

Q. Had this other girl ever worked at the Bellflower office? A. Yes.

Q. Had she worked there a number of times?

A. She originally started at Compton and had worked in Bellflower. [515]

(Testimony of Leonard Lugoff.)

Q. How long had she worked at the Bellflower office, this replacement person?

A. I would say three months.

Q. And how long was that before Mrs. Hickey came to work there?

A. It was the previous three months.

Q. Do I understand then that Mrs. Hickey succeeded to the duties of this girl who later on succeeded to Mrs. Hickey's duties; is that right?

A. That is right.

Q. And if I understand correctly, she wasn't new to the job when you referred to her as a "new girl"?

A. She wasn't new to the job but I was cutting down and I was combining those two jobs. I felt that my lineage was going to drop and I did not want to have that. Primarily I wanted to keep Gloria Hickey on and give her a break.

Q. Do I understand that what you had in mind was that this girl who had worked for three months in Gloria Hickey's duties, if she came over on Monday to take Gloria Hickey's place, that there would be a drop in lineage as a result of that?

A. I had that thought in mind because I was working a girl and was combining two territories with one girl and I thought I would lose in lineage.

Q. Did that happen the following Monday?

A. Yes, it did. [516]

* * *

Q. (By Mr. Grodsky): This discharge hap-

(Testimony of Leonard Lugoff.)

pened during the summer vacation period did it not? A. Yes.

Q. And during that period you are normally shorthanded are you?

A. I have got a relief girl. I wasn't shorthanded. However, this economy measure wasn't of my choosing. It was something I was ordered to do and I just had to take the order.

Q. By "relief girl" do you mean a girl who takes the place of a girl who is on vacation or sick? When you say you have a "relief girl," you mean a girl who isn't in your department?

A. No, she is in my department but she is normally on call for relief work or helping out when she isn't doing that.

Q. Now, since the time of Mrs. Hickey's discharge, you have been shorthanded, haven't you?

A. That is right. [519]

* * *

Recross-Examination

(Continued)

Trial Examiner: Put your question, Mr. Grodsky?

By Mr. Grodsky:

Q. You keep track of the lineage of the various employees? A. Yes.

Q. How was the lineage of Mrs. Hickey as compared, let us say, with the girl who had the same position that she had had previously?

(Testimony of Leonard Lugoff.)

A. It was a little bit lower. Since then, I have got another girl on it and in dollars and cents it has jumped, I would say almost 40% to 50%.

Q. Do you know of any reason for the jump in lineage since then? A. A better girl. [521]

* * *

C. S. SMITH

a witness recalled by and on behalf of the Respondent, being previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Kaufman:

Q. Mr. Smith, we had a discussion earlier about some sardines and advertisements in connection with them; do you remember that discussion, sir?

A. I do.

Q. Have you had an opportunity since I called you last to refresh your memory as to how the advertisement is placed for [525] the sardines?

A. I have.

Q. And what did you find out?

A. I had a letter found in our files which explained the matter.

Mr. Kaufman: For the record, while counsel is examining the letter, I might state that it is short. I did not have an opportunity to see it but less than a moment ago. As a matter of fact, I have not even read it, but I didn't want to hold up the hearing,

(Testimony of C. S. Smith.)

so, rather than attempting to introduce this in duplicate or to waive your rule, I have no objection if counsel hasn't, to having this letter read into the record, and then we will not have to have it in as an exhibit.

Have you any objection, counsel?

Mr. Grodsky: I am going to object to this letter.

Trial Examiner: It has not been offered yet really.

Mr. Kaufman: I want the witness to read it into the record.

Trial Examiner: I assume, Mr. Smith, you have seen this letter before?

The Witness: I have, sir. It was brought to me this afternoon. I promised the Court that I would try and find out where that ad came from on the sardines.

Trial Examiner: Yes. What would this go to establish, Mr. Kaufman? [526]

Mr. Kaufman: Let me use it as an aid to memory and I will continue asking the questions. I will not put it in if it doesn't establish anything.

Trial Examiner: It may very well, but you will persuade me in a moment if you can tell me.

Mr. Kaufman: I am attempting to show that this ad in relation to the sardines is placed through local advertising agencies and I believe this letter should so show.

The Witness: It was placed by Beesemyer-Ridnour Company for merchandise which they owned and were advertising.

(Testimony of C. S. Smith.)

Trial Examiner: I will receive it in evidence and in lieu of that, I will permit him to read the letter into the record.

I have some hesitancy for lack of foundation but I have heard no objection on that ground.

Mr. Grodsky: I started to object. I was objecting to the admission of this letter as an exhibit and the record will so show.

Trial Examiner: But on what ground?

Mr. Grodsky: It is a self-serving document. It is an improper method and it is hearsay.

Trial Examiner: Well, let us get first things straight first. Have you any objection on the ground of foundation, that is, that there is no evidence as yet that Beesemyer-Ridnour Company by Frank Beesemyer wrote a letter to the [527] Herald American?

Mr. Grodsky: No.

Trial Examiner: And it was received by them in the usual course of business?

Mr. Grodsky: No, I will stipulate to those facts.

Trial Examiner: Being over that hurdle, I am going to receive that letter simply as evidence of the business transaction or a business transaction by the newspapers, between them and the Beesemyer-Ridnour Company, concerning Norway sardines.

Whether or not it is connected up with particular sardines or a particular advertisement, I will let the record speak for itself.

Mr. Kaufman: Mr. Smith, would you read the letter into the record, please?

(Testimony of C. S. Smith.)

Trial Examiner: Mr. Grodsky, do you have any objection to the form here, that is, of reading it into the record?

Mr. Grodsky: I have no objection to the form but to the admissibility.

Trial Examiner: This is a letter from the letterhead of Beesemyer-Ridnour Company, 1340 East Sixth Street, Los Angeles 21, California. The letter is dated February 5, 1954, and addressed to Herald American Group, 218 E. Magnolia Street, Compton, California.

Now, if you wish to read, you can start with the word, [528] "Gentlemen."

Mr. Grodsky: May I suggest, in the interest of saving time that the letter can be given to the reporter to insert at this time. Is that satisfactory to you?

Mr. Kaufman: Yes.

Trial Examiner: All right.

"Gentlemen:

"We're off to another advertising year here on Norway sardines. I can see from the schedule that it is a bigger and better campaign than we had during 1953. The program runs, roughly, from the 11th of February, with a slight let-up after Lent, and continues from May through the end of 1954.

"Naturally, we, as distributors of King Oscar Sardines, Crown Sardines and Congress Sardines, want to see this program prove successful. To obtain this success, the retailer must be made to realize the potential existing in King Oscar, Crown and

(Testimony of C. S. Smith.)

Congress Sardines. I think it is worth pointing out to them that last year, through the efforts of this campaign, there was an increase of approximately 25% in the consumption of Norway Sardines.

“How did this increase in consumption come about? We feel that the increase came about because of the extra effort your contact men gave on behalf of these sardines. We know that you and your staff have pointed out to the retailer the extra benefits that can be obtained from imported sardines, and [529] the retailer reciprocated by building stacks and tying in with the ads running in your newspapers.

“We are again going to ask that you exert every effort in promoting Norway sardines. I am sure that you will find one of the brands that we distribute—that is King Oscar, Crown or Congress—in practically every store your men will be calling on, thereby making your job a little easier. Yours very truly, Bessemyer-Ridnour Company, By /s/ Frank Beesemyer.”

Q. (By Mr. Kaufman): Now, Mr. Smith, did you in your capacity as management, ever order any one employed by the Herald American to fire any employee for union activities?

A. I did not. [530]

* * *

Q. (By Mr. Kaufman): You had examined a profit and loss statement? A. I did.

Q. And as a result of that examination you ar-

(Testimony of C. S. Smith.)

rived at a conclusion? A. Yes.

Q. What was that conclusion?

A. That we were going to lay off a number of people, cut expenses, less wages in some cases and try to get more efficiency out of the organization.

Q. Now, there is an allegation in the complaint that Raymond J. Ross was fired on or about August 17th for engaging in concerted activities with other employees for the purposes of collective bargaining, et cetera.

In other words, I assume for the purpose of my questions, and I will state it briefly, it states that Mr. Ross was fired for union activities.

Is that a fair statement?

Mr. Grodsky: Yes.

Q. (By Mr. Kaufman): At the time that Mr. Ross was fired on or about August 17th, 1954, did you know he was engaged in [534] union activities?

A. I did not.

Q. At the time that Gloria Hickey and Doris Farley were fired on or about August 18th, 1954, did you know they were engaged in union activities? A. I did not.

Q. Had that been called to your attention by any one in your organization?

A. It had not been.

Q. Mr. Smith, did you give any instructions to have any of your employees questioned as to whether or not they belonged to the union or were engaged in union activities?

A. I did not at any time, no.

(Testimony of C. S. Smith.)

Q. Did you ever tell Mr. Lugoff that he was to discharge an entire department if he could not determine who was responsible for the organizing drive?

A. I definitely did not. I did not discuss the matter with Mr. Lugoff at all. [535]

* * *

Q. (By Mr. Kaufman): Did you ever say to Mr. Sheets by telephone call or by person or at any time, something to the effect that you had learned of a movement to organize a Guild in the Herald American and that you would rather close the papers down than sign up with the Guild?

A. No such conversation ever occurred. It would have been ridiculous on my part to make any statement at all to Mr. Sheets. It did not concern his department. [536]

* * *

Direct Examination

(Continued)

Mr. Kaufman: Gentlemen, if I am a tiny bit repetitious, it will only be for the matter of a second or two. Sometimes I forget where I left off.

By Mr. Kaufman:

Q. Mr. Smith, at any time did you know or have any knowledge that any one was discharged for union activities? A. Never at any time.

Q. Did you know, if it is such a fact, that any of your employees were questioned about union activities?

(Testimony of C. S. Smith.)

A. No, never at any time and I have never heard of any such thing if it happened.

Q. Did you order Mr. Murray or any one else to attempt a surveillance of any union activities?

A. I did not.

Q. Now, Mr. Smith, by an exhibit of General Counsel, I believe that an advertisement was introduced into evidence as to an advertisement in an issue of October 21st for some type of girl. [542] Are you familiar with that advertisement?

A. Yes, I am.

Q. And what was the purpose of that?

A. A girl quit in the office and we had to replace her.

Q. Now, in Mr. London's conversation with you after he had been discharged, did he tell you that he was discharged for union activities and furthermore, at any time, did he ever ask you whether or not that was the cause of his discharge?

A. No, sir, unions were not mentioned at any part of the conversation.

Q. Did you ever raise employees' wages to combat unionism or were the wages raised of any member of your department to combat unionism?

A. No.

Q. Now, besides your newspapers, you have other enterprises, do you not? A. Yes, I do.

Q. Are there unions in your paper?

A. There have been since 1941. [543]

(Testimony of C. S. Smith.)

Cross-Examination

By Mr. Grodsky:

Q. I show you General Counsel's Exhibit No. 6, Mr. Smith, which was furnished in response to a subpoena and under item No. 9 which calls for a list of all employees terminated after August 1, 1954, that is all classified advertising solicitors.

Under that heading does there appear the name of any other employee except Gloria Hickey?

A. That is the only one I see.

Q. Do you know the name of the other employee who you just testified quit?

A. You mean at one time in the Lakewood office?

Mr. Kaufman: I submit that this is an unfair question and confusing to me.

Mr. Grodsky: All right.

Mr. Kaufman: Just a moment. Are you referring now to the October 21st advertisement girl? [545]

Mr. Grodsky: Yes.

The Witness: I can answer that.

Trial Examiner: Excuse me, sir, perhaps you can and perhaps you cannot, but there is one question now and that is the name of the girl who quit, and according to your testimony, for whom that advertisement was inserted.

(Testimony of C. S. Smith.)

The Witness: But the question carried a string to it so that there would be no answer.

Trial Examiner: Mr. Smith, I will take care of that part of it if you will just answer the question.

The Witness: Well, my answer is that no classified ad girl quit.

Trial Examiner: All right, that is an answer.

What was the name of the girl who quit, whether she was a classified ad girl or otherwise?

The Witness: The girl's name was Marion. I forget her last name.

Trial Examiner: Her first name was "Marion"?

The Witness: Right.

Trial Examiner: All right. I am going to strike all of the witness' answer to that question, except the name "Marion." Go ahead, sir.

Q. (By Mr. Grodsky): Now, Mr. Smith, what is your attitude towards the Newspaper Guild?

A. I don't know anything about them. [546]

Mr. Kaufman: Now, just a moment. It seems to me that this isn't proper examination in view of the fact that I was precluded—just so that we have a record of it—I am just wondering why General Counsel did not object when I tried to get into that phase myself.

Trial Examiner: There was some difficulty with the question, but you did explore his attitude towards the union but not in such terms.

However, the question has been answered and I will let it stand.

Q. (By Mr. Grodsky): You have known of the

(Testimony of C. S. Smith.)

Newspaper Guild as a union of newspaper employees for some years, haven't you?

A. I did not know what it covered. There are thousands of unions and I have not followed this particular deal.

Q. I do not mean that you know in detail all of its principles and policies, but you knew it existed?

A. I have heard the name "Guild" but I didn't know what employees it covered.

Q. You have heard the name "Guild" for a number of years, haven't you?

A. I cannot say I have. It has not meant anything to me.

Q. When is the first time that you can recall, from which you are certain that you knew that a Newspaper Guild existed?

A. When I started getting——

Mr. Kaufman: I think this is going much too far afield [547] and it is irrelevant, immaterial and incompetent, and not proper examination.

Trial Examiner: I will take some area of his testimony and I will overrule the objection. Go ahead, sir.

The Witness: The first time I started to pay any attention to it was after this case was filed and I started getting dirty sheets through the mail signed by the Newspaper Guild, the biggest bunch of liars I have heard of. It would do justice to a five-year-old child's intelligence, the stuff they were sending out.

(Testimony of C. S. Smith.)

Q. (By Mr. Grodsky): And that is the first time that you had any direct personal contact with them?

A. That is the first time that I started to pay any attention to them or even find out what it was. [548]

* * *

Q. (By Mr. Grodsky): Yesterday there was read into the record a letter about the sardine advertisement—

A. Yes.

Q. The writer of the letter was soliciting for you to run newspaper articles in your news columns which would relate to Norwegian sardines?

Am I correct in that general summation?

Mr. Kaufman: I don't know, but Mr. Smith would know.

The Witness: I have the letter. You can see what it says.

Mr. Grodsky: Oh, fine.

Q. (By Mr. Grodsky): Calling your attention to the last paragraph which says in the first sentence: "We are again going to ask that you exert every effort in promoting Norway sardines."

In your knowledge, as the publisher of a paper, what type of promotion were they soliciting from you?

A. It says: "in practically every store your men will be calling on, thereby making your job a little easier."

When we get an advertisement for a product, we will send [550] what we call "fliers" to every ac-

(Testimony of C. S. Smith.)

count which handles that article or a similar article, calling their attention to the advertising campaign in the Herald American. Now, every newspaper does that, and that is what this goes to and in this particular case, I imagine that the "fliers" were sent to these people, because they are thanking us for it.

Q. Do you run recipes in which you specify the ingredients as "Norway sardines"?

A. I don't think so.

Trial Examiner: Am I supposed to take from that that Norwegian sardines move in interstate commerce?

Mr. Grodsky: No, this line of questioning is preliminary. This whole line is preliminary.

Mr. Kaufman: It covers a multitude.

Trial Examiner: Right.

Q. (By Mr. Grodsky): I take it there have been times in the past, to your knowledge, where you have run recipes specifying the ingredients as Norwegian sardines?

A. Never at any time that I know of on Norway sardines.

Q. Did you ever run recipes in which you specifically mentioned a trade-mark product, which was being advertised in your newspaper?

A. I don't know of any. [551]

* * *

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 17 and was received in evidence.)

(Testimony of C. S. Smith.)

GENERAL COUNSEL'S EXHIBIT 17

[Letterhead]

Beesemyer-Ridnour Company
Food Brokers—Manufacturers' Representatives
203-206 Metropolitan Warehouse
1340 East Sixth Street
Los Angeles 21, California

February 5, 1954.

Herald American Group
218 E. Magnolia St.
Compton, California

Gentlemen:

We're off to another advertising year here on Norway sardines. I can see from the schedule that it is a bigger and better campaign than we had during 1953. The program runs, roughly, from the 11th of February, with a slight let-up after Lent, and continues from May through the end of 1954.

Naturally, we, as distributors of King Oscar Sardines, Crown Sardines and Congress Sardines, want to see this program prove successful. To obtain this success, the retailer must be made to realize the potential existing in King Oscar, Crown and Congress Sardines. I think it is worth pointing out to them that last year, through the efforts of this cam-

(Testimony of C. S. Smith.)

paign, there was an increase of approximately 25% in the consumption of Norway Sardines.

How did this increase in consumption come about? We feel that the increase came about because of the extra effort your contact men gave on behalf of these sardines. We know that you and your staff have pointed out to the retailer the extra benefits that can be obtained from imported sardines, and the retailer reciprocated by building stacks and tying in with the ads running in your newspapers.

We are again going to ask that you exert every effort in promoting Norway sardines. I am sure that you will find one of the brands that we distribute—that is King Oscar, Crown or Congress—in practically every store your men will be calling on, thereby making your job a little easier.

Yours very truly,

BEESEMYER-RIDNOUR
COMPANY,

By /s/ FRANK,

FRANK BEESEMYER.

Received in evidence December 10, 1954.

Q. (By Mr. Grodsky): Mr. Smith, during the period of time that you have been managing editor, the actual operating top man in the company, the general manager I believe is your title, since

(Testimony of C. S. Smith.)

September 1st, do you know whether or not you have received news stories in connection with the new automobile models which have come out since that time?

A. Well, now, I have been referred to as "the general manager," "the top man" and "the managing editor." I would like to get it straight before I answer this.

Q. You know what your position is.

A. Well, but I have to give a truthful answer and you have given me three different job titles.

Mr. Grodsky: I will withdraw the question.

Q. (By Mr. Grodsky): Have you received any news stories with [556] reference to the new automobile models?

A. Have I? No, never at any time.

Trial Examiner: Well, to your knowledge, has the paper that you publish?

The Witness: We have had some stories but where they come from, I don't know.

Trial Examiner: Let us have the question so that we will make sure.

(Question read.)

The Witness: I cannot recall to mind any single story. There may have been some but I have not looked for them or have paid any attention to them.

Q. (By Mr. Grodsky): Do you know whether it is the practice or the custom for your newspaper to get such news stories?

A. From whom?

Q. About new models?

A. From whom?

(Testimony of C. S. Smith.)

Q. My first question is, do you know if you get such stories?

A. Everything that appears in the newspaper we get from somewhere, Mr. Grodsky.

Trial Examiner: That hardly answers the question. The question is whether you get such stories.

The Witness: From whom?

Trial Examiner: That still doesn't answer the question.

The Witness: Well, what stories? [557]

Trial Examiner: I think it was perfectly obvious what Mr. Grodsky wanted, but if you have any doubt, I will ask him to rephrase the question.

* * *

Mr. Grodsky: I will have this marked as General Counsel's Exhibit No. 18 for identification.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 18 for identification.)

Q. (By Mr. Grodsky): Mr. Smith, I show you General Counsel's Exhibit No. 18 for identification, being page 29 from the Compton-Lynwood edition of the Herald American for Thursday, December 2, 1954, and ask you whether on that page there is a big editorial head, "'55 Mercury on Display at George Moyer's"?

A. There is.

Q. And is there an article under that relating to the Mercury in general terms?

Trial Examiner: I suggest, Mr. Grodsky, that in the interests of saving time, you have had it

(Testimony of C. S. Smith.)

marked for identification, and it speaks for itself. Offer it and I will pass on it.

Mr. Grodsky: All right, I will offer this document in evidence. [558]

Mr. Kaufman: Just one moment. It is dated Thursday, December 2, 1954, and it throws no light on the accusations made——

Trial Examiner: I will receive the document.

(The document heretofore marked General Counsel's Exhibit No. 18 for identification, was received in evidence.)

Q. (By Mr. Grodsky): Do you know where the pictures of the two automobiles which appear on that page came from?

Mr. Kaufman: I object to that as being outside the scope of the direct examination and improper cross-examination. The subject wasn't covered by me.

Mr. Grodsky: May I be heard?

Trial Examiner: Yes.

Mr. Grodsky: Well, he brought in this Norway sardines thing.

Trial Examiner: Go ahead, I will overrule the objection.

The Witness: No, sir, I did not.

Q. (By Mr. Grodsky): It did not come over your desk? A. No, it did not.

Q. There are other articles on that page, one of which relates to the Lincoln, "1955 Lincoln at G. Moyer Showroom"; do you know where that advertisement originated?

(Testimony of C. S. Smith.)

A. I haven't the slightest idea.

Q. Do you know from what source your publishing company received [559] the article?

A. I do not.

Q. Do you know from what source, if there was a source, your company generally receive articles of this sort? A. I do not.

Q. Do you know whether or not they come to you as complete articles? A. No, I do not.

Q. In your organization who would know that?

A. I don't know.

Trial Examiner: Mr. Grodsky, let me ask you a question. There has been a witness in this proceeding who testified that advertisements for automobile models are placed by national advertising agencies so-called, or advertising agencies. I should not use the term "national."

Mr. Grodsky: That is right.

Trial Examiner: I believe his testimony was that the mats are also provided.

Mr. Grodsky: Yes, sir.

Trial Examiner: Now, is it your contention that this constitutes, because of the product that is advertised, irrespective of the source, that this constitutes so-called national advertising which facilitates the flow of goods in interstate commerce?

Mr. Grodsky: In part, yes. [560]

In part, the national advertising. I think the Board should be enlightened that national advertising could also include ancillary services, which

(Testimony of C. S. Smith.)

do not appear only as advertisements, namely, mats as well, and I know for a fact that such news mats are furnished.

Trial Examiner: By the advertiser?

Mr. Grodsky: By the advertising agency. I can take a stipulation to that effect or if not, I am entitled to get that in evidence.

Trial Examiner: Well, I think we can also belabor something too much. My feeling here, with respect to that kind of thing, is that the issue depends on the nature of the product rather than on the source of the advertisement which makes for jurisdiction. I think that is the issue.

Mr. Grodsky: Yes.

Trial Examiner: And I am just wondering if it isn't being overproved by you, but go ahead.

Mr. Grodsky: I understand your position, Mr. Examiner. I also sympathize with counsel's possible impatience but I think I am entitled to make my record.

Trial Examiner: Go ahead, sir.

Q. (By Grodsky): Who, in your organization, would know where these news items come from?

A. I haven't the slightest idea. I have one hundred and [561] eighty people in the organization.

Q. They are not all responsible for putting out the newspaper, are they?

A. Each one has his job.

Q. Would Mr. Brewer be the man who is responsible for putting in those news items in the paper?

A. Not on December 2nd, no, sir.

(Testimony of C. S. Smith.)

Q. Would Mr. Butler be the man who is responsible for putting in those news items in the paper?

A. That, sir, I cannot answer. If it was run as news, he would be; if it was run as help to advertisers, he would not. This could be either one from the looks of it.

Q. Who is responsible for items which appear to be news but which are run as "help to advertisers"?

A. That would depend upon the salesman on the territory to see—well, this is a personal deal of George M. Moyer and he is the man who is billed for it. The copy was presumably picked up from George M. Moyer. I haven't the slightest idea which salesman calls on George M. Moyer.

Q. It would be one of your display advertising salesmen? A. Possibly.

Q. That would be someone who works under the supervision of Mr. Hartwell?

A. No, because Mr. Hartwell wasn't classified advertising manager on December 2nd, 1954. [562]

Q. Under whose supervision would the display advertising salesman be?

A. That would depend on who he is.

Mr. Kaufman: We are going right around in a circle so I must object. The advertisement speaks very clearly for itself.

Mr. Grodsky: We are not talking about an ad.

Mr. Kaufman: The article alongside it speaks for itself. This witness is giving you the information he knows.

Mr. Grodsky: There is also an article on the

(Testimony of C. S. Smith.)

same page concerning General Motors and I am going to get to that next.

Mr. Kaufman: You have your exhibit right on the record and it speaks for itself.

Mr. Grodsky: I know, but I want to get to the bottom of this and I think the Board wants to, too. That is the only reason I want to.

Mr. Kaufman: The bottom of what?

Mr. Grodsky: Where they came from. Is there a pending question?

Mr. Kaufman: Yes, I have objected to your question and I am waiting for a ruling.

Trial Examiner: I was looking at the paper.

Mr. Kaufman: In order to make a ruling, sir, I thought?

Trial Examiner: Yes, I am looking for something that can enlighten me as to how much this speaks for itself, so that we can avoid this detail. [563] I am going to overrule the objection.

The Witness: What is the question?

Trial Examiner: I will have it read for you.

Mr. Grodsky: All right.

(Question read.)

Mr. Grodsky: I will withdraw the question because I have no one—I have no way of clearing it up.

Q. (By Mr. Grodsky): Did you have any person in your editorial department who is known as an auto editor? A. No, sir, we do not.

Q. Do you have any single person who regularly

(Testimony of C. S. Smith.)

handles auto news items? A. No, sir.

Q. Well, then, I come back to my question of who are the supervisors of your display advertising? A. In what zone, Mr. Grodsky?

Q. In the zone in which Mr. Moyer appears?

A. That I cannot answer, I don't know.

Q. Who, in your organization, does know?

A. I would have to make some inquiries to find out. [564]

* * *

Q. (By Trial Examiner): Excuse me. Mr. Smith, referring to General Counsel's Exhibit No. 18, can you tell me, please, whether by looking at the advertisement bearing the legend "Bendix" or relating to a Bendix, and bearing the name "Atlantic TV Sales," can you tell by looking at that, who placed the advertisement?

A. The Atlantic TV Sales. I happen to know about that particular account.

Q. Do you know from your knowledge of the account, who supplied the information which is the basis for the insert here, "Bendix Home Appliances, Div. AVCO Manufacturing Corp., Cincinnati 25, Ohio"?

A. No, sir, I cannot. We received the entire advertisement [565] from Atlantic TV Sales.

Q. That is the write-up and everything else?

A. Yes. It was probably sent by some other newspaper and the mat was given to us. As you can see, sir, the type on this is the same as the type on that (indicating).

(Testimony of C. S. Smith.)

Trial Examiner: The witness compares the type in the term "Bendix" with the type in "Atlantic Sales TV."

Mr. Grodsky: I would like to have this sheet from a newspaper marked General Counsel's Exhibit No. 19 for identification.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 19 for identification.)

Q. (By Mr. Grodsky): I show you General Counsel's Exhibit No. 19 for identification and ask you if that is a copy of a page of the Compton-Lynwood Herald American edition for Thursday, December 2nd, 1954?

A. This is one of the inserts for the Compton and Lynwood section.

Q. Now, in the upper left-hand corner of the paper, which I have had marked General Counsel's Exhibit No. 19 for identification, is a title "Guide to Good Shopping by Pamela Morrison"; do you see that article? A. I do.

Q. And at the bottom of the article does this language appear: "Damar Products, Inc., 75 Damar Building, Newark, N. J."? [556]

Mr. Kaufman: Now, just a minute. I am going to object to that. He has already introduced it into evidence or for identification and the document speaks for itself.

Mr. Grodsky: I offer the document in evidence.

Mr. Kaufman: I object to it on the grounds

(Testimony of C. S. Smith.)

that it is dated December 2, 1954, and there is no showing that it is a typical newspaper. Also, it happened after the occurrences and it dates back almost a year after the date of the charge.

Trial Examiner: I will receive it.

(The document heretofore marked General Counsel's Exhibit No. 19 for identification, was received in evidence.)

Q. (By Mr. Grodsky): I will ask you, is Pamela Morrison a member of your staff? Is she on your payroll as an employee?

A. I don't recognize the name.

Q. Do you know where that article came from?

A. No, sir, I don't.

Q. Will you examine the article and see whether it advertises items from Damar Products, Inc., 75 Damar Building, Newark, New Jersey?

Mr. Kaufman: Now, just a minute. The same objection, as it speaks for itself.

Trial Examiner: Is this a preliminary question leading up to something else?

Mr. Grodsky: Yes.

Trial Examiner: I will overrule the objection. [567]

The Witness: That is only on one of the parts that name Damar Products, Inc., 75 Damar Building, Newark, New Jersey.

Q. (By Mr. Grodsky): Do you have any business with that company?

(Testimony of C. S. Smith.)

A. I don't know. I don't recognize the name and I do not believe we have.

Q. Do you know how it got into a local newspaper in Compton?

A. I don't know. I haven't the slightest idea.

Q. Who, in your organization, would know?

A. I don't know.

Q. You are the top man in the organization?

Trial Examiner: Well, he has already testified to that, Mr. Grodsky. Let us not repeat.

Q. (By Mr. Grodsky): Now, Mr. Smith, you testified in looking at some profit and loss statements, you found that the conditions were very bad, if I recall correctly; is that correct?

A. Over what period?

Q. Well, you testified, I believe, some time before the discharges in August?

A. That is right.

Q. Do you have the profit and loss statements here? A. I do. [568]

* * *

Q. (By Mr. Grodsky): Now, Mr. Smith, when was the first time that you became aware of the fact that your economic condition in the Herald American was deteriorating, was bad?

A. Around March.

Q. And what, if anything, did you do about it at that time?

A. Held a series of meetings with top department heads.

(Testimony of C. S. Smith.)

Q. When was the first meeting held?

A. Some time in March.

Q. Who was present at that first meeting?

A. Various mechanical superintendents and the various department heads. [575]

Q. Specifically, do you remember any names of the people who were present?

Mr. Kaufman: Now, Mr. Grodsky, just a moment. I submit this is improper cross-examination and outside the scope of the direct examination, bringing up issues which might have a slight relevancy, but which are so collateral that we will be weeks going into them.

What was the conversation and who was present there. Well, there might be a slight bit of relevancy there but it is so outweighed by the collateralness of the issues as to come within the purview of a ruling.

Trial Examiner: I think it has a role in this proceeding. The door was opened in direct examination by this witness or you, which I think is beside the point, but he testified to, at least he was concerned about the matter as far back as February.

Go ahead, sir.

Q. (By Mr. Grodsky): Now, at this first meeting which you say took place in March, who was present that you recall, by name?

A. I can give you the names of some of the people that were present at all of the meetings. There may have been one or two absent at each one.

(Testimony of C. S. Smith.)

I can give you the names of the group who were called to the meeting.

Q. Now, I am addressing myself to this first meeting first. [576]

A. I don't remember who was there. I have given you to the best of my ability what the answer was. Now, we had more than fifteen meetings. I kept no minutes on the meetings and as I told you, there would be one or two absent from the meeting, but I can give you the industrial group who attended all or part of the meetings.

Q. What was discussed at the first meeting?

A. What did you say?

Q. What was discussed at the first meeting?

A. The fact that we were losing money at this time and losing considerable money.

Q. And did you ask for any action from anybody at that meeting? A. Did I what?

Q. Did you ask for any action from anybody at that meeting? A. Why, I certainly did.

Q. Whom did you ask to do what?

A. I asked each department head to cut down as much as they could.

Trial Examiner: Cut down on what?

The Witness: Expenses. We discussed more efficiency in the job. We discussed the salesmen getting their copy in earlier. We discussed the possibility of trying to get additional business. We discussed the possibility of trying to raise rates. [577]

Q. (By Trial Examiner): Did you instruct the

(Testimony of C. S. Smith.)

people at the meeting to cut expenses by cutting staff?

A. Not until the July or August meeting, when we had tried everything else and had been unable to effect the economies that we wanted. And at that time, I lowered the boom and told them to get rid of one or two people in every department.

And in the mechanical end, which is a large part of it and over which we have no control because if the press needs twelve men, it needs twelve men according to union contract and they stay there until they finish, and we asked the superintendent and all others, to shorten the hours as much as they could.

We put on an extra maintenance man to stop breakdowns at that time and we did everything that we could to try to promote efficiency.

Q. Going back to any meeting which was held in February or March, 1954, was there any discussion about getting people and paying them more money and cutting staff or pays?

A. It wasn't at the general meeting, no. There was a private meeting with Mr. Butler and Mr. Brewer and myself afterwards.

Q. This was when?

A. What did you say?

Q. This was when?

A. Some time in March or April, we had a number of meetings, [578] your Honor.

Q. And what, if anything, did you tell them then?

(Testimony of C. S. Smith.)

A. I told them that I thought the news department was overstaffed. At that time sometimes we were putting in as much as forty-five per cent news matter, and I wanted it cut down to twenty-five per cent, which meant a lot less work for the news staff.

Q. Was it at this meeting you told them to hire better people and pay increased salaries?

A. I never told them to hire better people. I told them I wasn't satisfied with the salary schedule in the editorial department.

Q. May we go back to the first meeting which you had with Mr. Butler and the other gentlemen; what did you tell them then about that?

A. I think that was exclusively on cutting down the amount of news in each paper and also that I wanted better reportorial work and better front pages.

Q. When was the first time that you proposed or suggested or instructed——

A. I don't hear you.

Q. When was the first time that you proposed, suggested or instructed any of your staff to pay higher wages?

Mr. Kaufman: Now, your Honor, may I object. You said "proposed or instructed," so may I ask you to break that down? [579] It is slightly compound.

Trial Examiner: I certainly will.

Q. (By Trial Examiner): When did you first propose it? A. Nearly two years ago.

(Testimony of C. S. Smith.)

Q. To whom?

A. Mr. Butler and I talked it over with Mr. Brewer a number of times and in March I took a more active interest, and when I looked over the salary schedules and the profit and loss statements, in July and August especially—

Q. Do not tell us what the statements contained now.

A. What did you say?

Q. Do not tell us what the statements contained.

A. All right. When I looked over the statements, I immediately called a meeting and told them that something had to be done at once, that Mr. Brewer wasn't well and was going on an extended vacation, and that I was taking over.

And I said the first thing that I was going to insist upon was that there be an immediate cut in payroll and there were some nine to eleven people laid off.

Q. When did you first propose that the wages be increased—I realize you said two years ago—do I understand that no increases were given as a result of your first proposal?

A. There were some wage increases in the whole organization. I am not too familiar with it because there were a lot of people, but I felt, and still feel, that the wages in the [580] editorial department had lagged behind the others.

Q. When did you first tell your staff that, or any member of your staff?

A. I think Mr. Brewer and I talked it over for

(Testimony of C. S. Smith.)

some time and in March, it was brought up rather forcibly.

Q. Did you bring it up? A. Yes.

Q. What did you tell him at that time?

A. I said I did not want people, as he said yesterday, I didn't want cheap people, that I would rather have one high priced man than three cheap ones, but I still wasn't engaged actively in handling the paper and I didn't want to step in and take over arbitrarily which I did do in July and August.

Q. Well, did Mr. Brewer and Mr. Butler say they would not act on your proposal?

A. No, Mr. Butler said he thought we were paying more than other newspapers in the neighborhood at that time and I brought it up in July or August and insisted on a survey so when I saw these reports, I wasn't satisfied.

Q. What were the results of that survey as shown to you?

A. That they were either paying about the same prices that we were or less.

Q. This was in June or July?

A. June or July of 1954, yes.

Trial Examiner: Go ahead, Mr. Grodsky. [581]

The Witness: And I might say that the salaries in the editorial department had lagged away behind salaries in other departments.

Trial Examiner: Well, I think you have answered my question.

Go ahead, Mr. Grodsky.

(Testimony of C. S. Smith.)

Q. (By Mr. Grodsky): Now, who was directed—strike that. Did you direct the discharge of Doris Farley?

A. I don't know. I had nothing to do with the individual people who were laid off.

Q. Doris Farley was a PBX operator, just to refresh your recollection, a cashier and PBX operator.

A. That is what I heard in the proceedings.

Q. Who was her immediate supervisor?

A. I don't think she would come under—I imagine she was under Mr. Brewer. I cannot be sure on that though.

Q. Did you discuss with Mr. Brewer the necessity of him laying off people on his staff?

A. I discussed with all of them the absolute necessity and gave them a total to work out and get rid of them.

Q. When did that discussion take place?

A. Some time in August.

Q. And who was present at that discussion?

A. Practically every department head.

Q. Will you tell us now by name, whom you remember was [582] present at that meeting?

A. Joe Margan, I think was there.

Q. Will you tell us of what department he was head?

A. Press foreman. A chap named "Scotty" who is the head of the Mailer's Union there. He was present. There was a man representing the stereo-

(Testimony of C. S. Smith.)

typing department, the head of it. I have forgotten his name.

There were one or two men there from the machine operating and the compositors.

Q. Do you remember their names?

A. I don't. I think Mr. Brewer was there and Mr. Butler.

Q. Right.

A. And I think Mr. Murray was there.

Q. Right. Anybody else?

A. I think Mr. Huber was there. Now, I cannot testify that all of these men were at this particular meeting, but I can testify that this was the group that I always called to attend these meetings and there were usually one or two absent.

Trial Examiner: Which can you state were there with certainty?

The Witness: I cannot state as to any of them, with the exception of Mr. Butler and Mr. Brewer.

Q. (By Trial Examiner): Well, you can state with certainty that Messrs. Brewer and Butler were there?

A. That is correct and at least eight or ten others. [583]

Q. By name, can you state with certainty, anybody else?

A. No, I have given the list here that we always requested to come out. Now, as to which ones were off that day and sleeping, I cannot answer.

Q. My question still is with respect to anybody

(Testimony of C. S. Smith.)

else but Mr. Butler and Mr. Brewer. Can you state by name with certainty, who was there?

A. I cannot. I have given it just the best I can.

Trial Examiner: All right. That answers my question. Go ahead.

Q. (By Mr. Grodsky): Now, this meeting took place before the discharges which took place on August 17th and 18th? A. That is right.

Q. How long before the discharges did this meeting take place? A. One to two days.

Q. Now, the 16th is a Monday, the 17th is a Tuesday. With that in mind, would you be able to tell us what day of the week that meeting took place?

A. It was either the Friday of the previous week or it was the Monday of that week. I cannot tell you which.

Q. And what did you instruct the people present to do? A. To lay off some help.

Q. Did you tell anybody specifically to lay off anybody?

A. I told them that we would have to have ten to twelve people [584] laid off.

Q. Did you say in what departments the people were to be laid off?

A. I told them to get together themselves and decide on which ten to twelve people had to go because the payroll was top heavy.

Q. (By Trial Examiner): Would you look at this 1954 calendar, Mr. Smith, please, and go down to August, particularly, and would you see if the

(Testimony of C. S. Smith.)

calendar refreshes your memory as to the day of the week or the date when this meeting was held, at which you say Mr. Butler and Mr. Brewer were present and some other department heads?

A. There were some three to five meetings at my house every Monday. It is either Friday or Monday. I have other meetings with various enterprises on various matters.

Q. I take it that you don't want to look at the calendar to refresh your memory?

A. I did. Friday 13th and the other dates are the 16th and 17th, Monday and Tuesday, and there was a peremptory cutback right away.

Q. My question was whether or not the calendar would refresh your recollection, and if you could give me the date and not whether there was a peremptory cutback.

Q. (By Mr. Grodsky): Mr. Smith, at the time of the cutback, did any of the executives complain that it would decrease the efficiency of their operations? [585]

A. I don't think so. I don't remember.

Q. Did any of them say that they would not be able to operate with the shutdown in help?

A. No, sir, they did not.

Q. Did any of them at any time after, did they ask you for permission to hire new help?

A. I don't remember any such thing.

Q. Would they have to have permission from you to hire additional help after the cutback?

A. Not until last week. They had orders at the

(Testimony of C. S. Smith.)

time not to hire any more, but last week I put in a different rule, which is that employees to be hired or fired, it must go over my desk.

Q. When you say that "they had orders not to hire any more," do you mean by that that they had orders not to hire any additional help or any help to substitute for those who were being let go?

A. That is correct.

Q. Well, I asked it two ways; which is correct?

A. Well, you ask me one way and I will tell you which is correct.

Q. Did you instruct them that they did not have authority to hire help to take the place of those who were being let go?

A. They were definitely instructed as to that.

Q. Did anybody ask you for authority to hire another PBX [586] operator?

A. No, sir, not that I remember. In fact, I didn't know a PBX operator had been let go until these proceedings started. I wasn't interested in who the people were. I was interested in getting ten to twelve people off the payroll. It was top heavy.

Q. Do you know who directed the discharge of Gloria Hickey?

A. I heard Mr. Lugoff did in the courtroom. I heard him say he had discharged her.

Q. Well, you may also have heard Mr. Lugoff say that he had received the orders from somebody else, other than you. Now, may I inquire from you, do you know who directed the discharge of Gloria Hickey?

(Testimony of C. S. Smith.)

A. Mr. Lugoff himself. He said he was the one solely responsible for picking her and he so testified here in this courtroom.

Q. (By Trial Examiner): Were ten or twelve people let go during that week? A. Sir?

Q. Were ten or twelve people let go during that week?

A. That is my recollection. It was from nine to twelve.

Q. During the week beginning August 16th, I believe?

A. That is when the discharges started and I think they were all consummated in that week. I would have to check the records to make sure but the orders were very plain and explicit. [587]

Q. What I am trying to find out is not what the orders were but if ten or twelve people were laid off during that week in fact.

A. As far as I know that was done. There was nothing brought to my attention that my orders were not followed out.

Q. Well, can you tell me with certainty then, that there were ten or twelve people, of your own knowledge?

A. I have answered the question to the best of my ability. I can give you no further light on the matter.

Trial Examiner: Well, I don't understand your answer.

The Witness: Maybe if the reporter would read it to you, it would clarify it.

(Testimony of C. S. Smith.)

Q. (By Trial Examiner): Well, I will ask you then, in order to save time, whether you know of your own knowledge, in truth or in fact, that ten or twelve people were laid off that week?

A. I can only answer that by saying I presume they were because I did not follow it up and it wasn't called to my attention that my orders had not been followed.

Trial Examiner: All right.

Mr. Kaufman: If you want to, your Honor, you can have Mr. Brewer testify as to that point as he knows.

Trial Examiner: Well, I have asked this witness and I [588] have his answer.

Q. (By Mr. Grodsky): At any time after the layoff of Miss Hickey, did Mr. Lugoff ask permission to hire an additional girl?

A. I don't remember of any such incident, except as a replacement.

Q. Did he ask permission to hire a girl as a replacement?

A. To replace the girl who was laid off in the Lakewood office and the classified ad girl there was to have been transferred as society editress.

Q. Did Mr. Butler ever ask you for authorization to increase his staff?

A. Authorization to what?

Q. To increase his staff?

A. Not that I remember.

Q. Did he ever—strike that. Did Mr. Butler ask your permission to hire Earl Griswold?

(Testimony of C. S. Smith.)

A. No, sir, he did not. I hired him myself.

Q. Did you check with Mr. Butler as to whether he needed an additional man?

A. Mr. Butler was out of town and I took it into my own hands. The man who was handling the editorial work at Long Beach wasn't satisfactory. We transferred him and transferred the man from Lakewood to Long Beach, and Earl Griswold who was editor of a competing paper there for twelve years, was [589] thoroughly familiar with the job and I was glad to get him. And he is doing a grand job.

Q. In view of the fact that you have Mr. Griswold on your payroll, do you now have an additional man in the editorial department?

A. No, I do not have. It is the same number.

Trial Examiner: The same number as when?

The Witness: After the cutback. In fact, I think there is still one less because a society editress has been let go since then, and not replaced.

Trial Examiner: You mean Maxine Galt?

The Witness: Who?

Trial Examiner: Maxine Galt?

The Witness: Maxine Galt was discharged not only for cause but so that the girl who had been with us fifteen years would have a place, but there has been no addition in numbers.

Q. (By Mr. Grodsky): Mrs. Galt has—strike that. Mrs. Galt was replaced by Helen Farlow?

A. Yes. [590]

RALPH J. BREWER

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Kaufman:

Q. In regard to the use of telephones for a person's own business during the time you were running the organization, do you have any recollection pertaining to that?

A. A general rule has been in effect for many years which had come out and had gone out by notices to all offices that [591] personal calls were to be reported to the operator and paid for.

Q. Did you ever collect any money from the staff for personal calls, from Mr. London?

A. Not to my knowledge.

Q. Do you know who fired Mrs. Farley?

A. I selected her as being laid off.

Q. Was any union activity on her part the cause of your firing her? A. No.

Q. Or any other employee? A. No.

Q. Did you have any idea that she was interested in the Guild at the time she was selected?

A. I did not.

Q. Actually she was very junior in time of service?

Mr. Grodsky: I object to that. It is leading.

Trial Examiner: Yes.

(Testimony of Ralph J. Brewer.)

Q. (By Mr. Kaufman): What was your reason, please, for her discharge?

A. My reason for selecting her was that she was the youngest member on the switchboard.

Q. During the time there was this cutback in the middle of August, do you know approximately how many employees were fired? [592]

A. I know of at least eight or nine in the front office on that particular definite cutback.

Mr. Kaufman: That is all.

Cross-Examination

By Mr. Grodsky:

Q. Do you know the names of these employees?

A. I will try to give them to you.

Q. And the departments or their jobs, please.

A. I will see if I can remember them. Gloria Hickey in classified; Doris Farley, cashier and PBX operator; Ray Ross, in editorial; William Edmond, in editorial; Edwina Laurence, I believe that is her first name and I am sure her last name is Laurence; Mabel Harris, messenger; Ted Chargil, display advertising; how many is that?

Mr. Kaufman: Seven.

The Witness: And Marsha Bateman in editorial. That was a part-time, incidentally.

Trial Examiner: In that connection, I don't see her name listed here, on General Counsel's Exhibit No. 6.

The Witness: She may have been a part-time

(Testimony of Ralph J. Brewer.)

employee. She worked after school and perhaps she wasn't even listed.

Mr. Kaufman: How about Collins? You did not name him.

The Witness: Oh, Collins was a new man who had just been there for about one week.

Mr. Kaufman: He was let go? [593]

The Witness: Yes.

Trial Examiner: Think a moment now. Is there anybody else?

The Witness: It was a definite cutback.

Mr. Kaufman: No, no, the question is can you remember any of their names?

The Witness: I was trying to see. There were a lot of them in the back shop, but I cannot give you their names.

Trial Examiner: I am interested only in the people that you can quote.

The Witness: I cannot name the ones that were laid off in the back shop.

Trial Examiner: What do you mean by the back shop''?

The Witness: The production end, the mechanical trades.

Trial Examiner: The mechanical trades?

The Witness: Yes.

Trial Examiner: All right, Mr. Grodsky, go ahead.

Q. (By Mr. Grodsky): Do you know what day or date that Edwina Laurence was laid off?

A. It was in the same week, but I couldn't say.

(Testimony of Ralph J. Brewer.)

Trial Examiner: She was what?

The Witness: She was a collector. It didn't show on that report because it wasn't requested on that report.

Mr. Kaufman: 8/18 is the date.

Mr. Grodsky: Well, wait a minute. [594]

Mr. Kaufman: Oh, I am sorry. Strike that. I am too impatient. Strike it, it isn't in there. His answer was the same week.

Q. (By Mr. Grodsky): And what date, if you know, was Mabel Harris laid off?

A. I cannot answer your question by saying that all of those were laid off in the week starting Saturday, August 14th, I can put in that way, from Saturday 14th, within a seven day period.

Trial Examiner: All right.

Q. (By Mr. Grodsky): Now, when were you told that you would have to make these layoffs?

A. They had been under discussion, I think, for many months.

Q. How many discussions had there been?

A. I met with Mr. Smith every day. Department heads met once a week. But the outcome of it was that every department must cut down. To the best of my knowledge that was either on Thursday the 12th or Friday the 13th.

Q. And what specific orders did you receive in that regard?

A. I just answered that, that the orders were to cut down on all departments. Mr. Smith made a flat ultimatum and we were to cut down on all

(Testimony of Ralph J. Brewer.)

departments. I handled the ones over which I had direct supervision.

Q. You heard Mr. Smith's testimony to the effect that he simply laid down an ultimatum stating that he wanted so many [595] employees off the payroll? A. That is right.

Q. Is that the way it happened? A. Yes.

Q. What figure did he use?

A. He wanted at least twelve off the payroll, a minimum of twelve.

Q. And he left it entirely up to you and the others to decide among yourselves how many would go from each department? A. That is true.

Q. Did you have a subsequent meeting among yourselves in which you decided who would go?

A. No.

Q. How did you know whom to let go or lay off or how many to lay off in your department?

A. That was discussed at this meeting as to which departments were going to let so many go.

Q. Then I understand now that at the meeting with Mr. Smith, you specifically discussed how many would be let go in any specific department?

A. Yes, but not individuals. It was just discussed by departments.

Q. How many were to be let go in each department?

A. I cannot answer that. The record speaks for itself, Mr. Grodsky. [596]

(Testimony of Ralph J. Brewer.)

The Witness: Read the question he asked me, please.

(Question read.)

The Witness: One or more from each department; I will put it that way.

Q. (By Mr. Grodsky): When you left that meeting, did you know specifically how many employees you would have to let go that were under your direct supervision?

A. They were all indirectly under my supervision. I was general manager of the place. I wasn't a department head.

Q. Did you have any employees who were directly under your supervision?

A. Every employee in the place is under my supervision.

Q. When you left that meeting, did you know how many employees Mr. Butler would have to let go by number?

A. At that meeting, no, sir.

Q. Then a quota wasn't assigned to him at that time?

A. That is true.

Q. Was there ever a time when a quota was assigned to him?

A. Nothing more than I had to get rid of at least one. [397] That was the order of Mr. Smith in this matter, one or more in each department.

Q. I don't quite understand you, but I will ask you a question and I don't want you to think I am trying to put words into your mouth.

(Testimony of Ralph J. Brewer.)

Is my understanding that after he left the meeting, if Mr. Butler discharged more than one employee, he was acting on his own initiative?

A. He was acting, after he talked to me. I was the supervisor who made up the list on the instructions of Mr. Smith.

Q. And you went over with Mr. Butler, who was to be laid off?

A. When we came down to the various departments, we had so many names, we had to take some off and put some on. It was a matter of cutting down nine to twelve in the personnel.

Q. Mr. Brewer, I asked you a simple question. Was there not a discussion between you and he that the decision was made as to who should be let go in the editorial department? A. No.

Q. Were you at the discussion, if there was a discussion, at which it was determined who would be specifically let go in the editorial department, by name?

Mr. Kaufman: Do you understand the question, Mr. Brewer? If not, the reporter will read it to you.

The Witness: I understand the question. Certainly I [598] knew the names but I didn't tell him to pick out. We discussed the names but he chose the persons.

Q. Mr. Brewer, possibly I did not make myself clear——

Mr. Kaufman: I think that the question has been asked and answered. It has been asked and answered now clearly.

(Testimony of Ralph J. Brewer.)

Trial Examiner: Please put a question and we will see.

Q. (By Mr. Grodsky): Did Mr. Butler make the decision as to whom he would lay off in the editorial department in the course of a discussion with you and as part of that discussion?

A. That is true.

Q. Now, when did that discussion take place?

A. Immediately after the meeting at Mr. Smith's home.

Q. On the same day?

A. On the same day and the following day.

Q. Now, since you testified that the meeting in Mr. Smith's home was either on a Thursday or a Friday, this discussion could have been either on a Thursday, a Friday or a Saturday?

A. That is true.

Q. Now, when you selected Mrs. Farley for lay-off, the only reason that you selected her is because she was a junior employee in terms of service?

A. That is true.

Q. How soon after she was laid off, did it become necessary to hire another PBX operator?

A. We hired another PBX operator at the Compton Office for [599] one who quit, but I knew from Mrs. Farley's application she could not even come through to handle the Compton board.

Trial Examiner: Well, I am going to strike that testimony. That isn't the present question.

The Witness: May I make one statement here,

(Testimony of Ralph J. Brewer.)

your Honor, either off the record or on, but I would like to justify this statement?

Trial Examiner: This last statement?

The Witness: Yes.

Trial Examiner: I am striking your last answer as it is not responsive.

I am going to ask the reporter to read the question to you and I want you to answer the question and stick strictly to the point.

(Question read.)

Mr. Kaufman: To replace her, do you mean?

Mr. Grodsky: No other.

Trial Examiner: When was the next PBX operator hired?

Mr. Kaufman: No, that wasn't the question.

Mr. Grodsky: I will rephrase the question.

Trial Examiner: All right.

Q. (By Mr. Grodsky): When did you next hire a new PBX operator?

A. May I see General Counsel's Exhibit No. 6?

Q. Yes, certainly. [600]

Mr. Kaufman: It is my understanding that this witness had left his job during September and October.

Mr. Grodsky: This happened in July or August.

Mr. Kaufman: That is fine. I didn't want to get into a question when he wasn't there. She was let go, I believe, on August 18th?

Mr. Grodsky: Yes.

(Testimony of Ralph J. Brewer.)

The Witness: We hired a PBX operator in the Compton office on September 1, 1954.

Q. (By Mr. Grodsky): And just before that date, who was discharged? One girl who was a part-time girl into a full-time PBX operator; is that correct? A. Just before September 1st?

Q. Yes.

A. No, sir, we did that on August 17th.

Q. It says here from part-time to full-time August 30, 1954. A. That is right.

Trial Examiner: Are you referring to Marion Cronk?

The Witness: Yes.

Trial Examiner: What office is that?

The Witness: Miss Cronk was a part-time employee in the Compton office and was made a full-time PBX operator and cashier in the Bellflower office, to replace Miss Farley.

Q. (By Mr. Grodsky): Now, when she was a part-time employee, in what capacity was she an employee? [601]

A. She did clerical work in the display advertising department.

Q. Was she also a messenger part-time?

A. That is part of her duties, yes.

Q. Had she been a part-time PBX operator?

A. She used to work for us as a PBX operator and cashier and our employment records will show that. She is a former employee who came back.

Q. (By Trial Examiner): One point I have in mind. When you discussed with Mr. Butler a list

(Testimony of Ralph J. Brewer.)

of employees to be let go, and then a list was made out, was Gloria Hickey on that list?

A. She was a classified ad department employee.

Q. Was her name on that list?

A. No, she was in another department.

Q. All I wanted to know of you was whether her name was on the list.

A. Not on the editorial list made out with Mr. Butler.

Q. Was she on any list made out with Mr. Butler? A. No.

Q. As far as Mrs. Farley is concerned, do I understand that Marion Cronk filled the same position, and I am not now asking whether she replaced Miss Farley, I am simply asking whether or not she filled the same job that Miss Farley had?

A. She went from part-time to full-time.

Q. Filling the same position? [602]

A. Yes.

* * *

Received December 14, 1954. [603]

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

HERALD PUBLISHING COMPANY OF BELL-
FLOWER,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "Herald Publishing Company of Bellflower and American Newspaper Guild, CIO," Case No. 21-CA-2044 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner Herman Marx on December 6, 7, 8, 9 and 10, 1954, together with all exhibits introduced in evidence.

2. Copy of Trial Examiner's Intermediate Report and Recommended Order (annexed to item 4 hereof) and order transferring case to the Board, both issued March 29, 1955, together with affidavit of service and United States Post Office return receipts thereof.

3. Respondent's exceptions to the Intermediate Report and Recommended Order received by the Board on May 3, 1955.

4. Copy of Decision and Order issued by the National Labor Relations Board on September 16, 1955, with Intermediate Report and Recommended Order annexed, together with affidavit of service and United States Post Office return receipts thereof.

5. Respondent's petition for rehearing filed on October 7, 1955.

6. Copy of Board's order denying Respondent's petition for rehearing dated October 20, 1955, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 9th day of March, 1956.

[Seal]

NATIONAL LABOR
RELATIONS BOARD,

/s/ FRANK M. KLEILER,
Executive Secretary.

[Endorsed]: No. 15027. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Herald Publishing Company of Bellflower, Respondent, and Herald Publishing Company of Bellflower, Petitioner, vs. National Labor Relations Board, Respondent. Transcript of Record. Petition for Enforcement of and Petition to Review an Order of the National Labor Relations Board.

Filed: March 12, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15027

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HERALD PUBLISHING COMPANY OF BELL-
FLOWER,

Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Herald Publishing Company of Bellflower, Compton, California, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "Herald Publishing Company of Bellflower and American Newspaper Guild, CIO," Case No. 21-CA-20.44.

In support of this petition the Board respectfully shows:

(1) Respondent is a California corporation engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on September 16, 1955, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, Herald Publishing Company of Bellflower, Compton, California, its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's Counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and

evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent, its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 1st day of February, 1956.

NATIONAL LABOR
RELATIONS BOARD,

By /s/ MARCEL MALLET-PREVOST,
Assistant General Counsel.

[Endorsed]: Filed February 3, 1956.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD AND PETITION TO SET ASIDE SAID ORDER

Answer to Petition for Enforcement.

Answering the petition of National Labor Relations Board for enforcement of its order, Herald Publishing Company of Bellflower, Respondent, admits, denies and alleges as follows:

I.

Answering paragraph (1) of said petition, Respondent admits it is a California corporation engaged in business in the State of California, within

this judicial circuit. Respondent denies that any unfair labor practices were committed by it within this judicial circuit or in any other judicial circuit. Respondent denies that This Court has jurisdiction of this petition on the ground that Respondent has not engaged in interstate commerce within the meaning of the National Labor Relations Act, during the period in question in this proceeding.

II.

Answering paragraph (2) of said petition, Respondent admits that the Board, on September 16, 1955, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, Herald Publishing Company of Bellflower, Compton, California, its officers, agents, successors, and assigns. That on the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel. Otherwise Respondent denies each and every allegation of said paragraph.

III.

Respondent admits the allegations of paragraph (3) of said petition.

Petition to Set Aside Order.

Respondent respectfully petitions the Court to set aside said order of the National Labor Relations Board, on the ground that said order and each and every portion thereof is unsupported by the

evidence upon the whole record, arbitrary, capricious, and abuse of discretion, and not in accordance with law, and hence unconstitutional; and on the further ground that the Board was without jurisdiction to render a decision in the case.

Dated at Los Angeles, California, this .. day of February, 1956.

HERALD PUBLISHING COM-
PANY OF BELLFLOWER,

By /s/ PETER M. WINKELMAN, of
LELAND & PLATTNER,
Attorneys for Respondent.

Certificate of Service attached.

[Endorsed]: Filed February 16, 1956.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

In this proceeding petitioner National Labor Relations Board will rely upon the following points:

1. The Board properly asserted jurisdiction over the unfair labor practices here involved.

2. Substantial evidence on the record considered as a whole supports the Board's conclusions that respondent interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act.

3. Substantial evidence on the record considered as a whole supports the Board's conclusion that respondent discriminatorily discharged employees

London, Ross, Hickey and Farley in violation of Section 8 (a)(1) and (3) of the Act.

NATIONAL LABOR
RELATIONS BOARD,

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel.

[Endorsed]: Filed March 12, 1956.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
RESPONDENT INTENDS TO RELY

In this proceeding respondent Herald Publishing Company of Bellflower will rely upon the following points:

1. The Board improperly asserted jurisdiction over the alleged unfair labor practices here involved.

2. Substantial evidence on the record considered as a whole supports the respondent's conclusion that there were no unfair labor practices involved herein and that employees London, Ross, Hickey and Farley were not discharged in violation of the Act.

Respectfully submitted,

LELAND & PLATTNER,

By /s/ PETE M. WINKELMAN,

Attorneys for Respondent.

[Endorsed]: Filed April 26, 1956.